

MARFORRES LEGAL SOP

UNIT LETTERHEAD

SSIC  
Code  
Date

SAMPLE CI REPORT

From: Captain \_\_\_\_\_, USMC  
To: (CA)

Subj: SAME AS SUBJECT ON CONVENING ORDER

Encl: (1) Convening order and modifications thereto (if any  
were issued)  
(2) Summary (or verbatim) of sworn (or unsworn) testimony  
of (witness)  
(3) Summary (or verbatim) of sworn (or unsworn)  
testimony of (witness)  
(4) Statement signed by witness  
(5) Description of (evidence found at scene of the  
accident)  
(6) Photograph of \_\_\_\_\_ depicting

**Preliminary Statement**

1. This investigation was conducted to inquire into the facts and circumstances surrounding (see subject line). All reasonably available evidence and information has been collected and all directives of the convening authority (CA) have been met. (Detail any extensions of time granted by the CA and difficulties encountered obtaining evidence). All social security numbers were obtained administratively or in compliance with the Privacy Act of 1974, 5 U.S.C. 552.

**Findings of Fact**

1. \_\_\_\_\_ [encl 0,0]  
2. \_\_\_\_\_ [encl 0,0]

**Opinions**

1. \_\_\_\_\_ [FoF 0, 0]  
2. \_\_\_\_\_ [FoF 0, 0]

MARFORRES LEGAL SOP

Subj: SAME AS SUBJECT ON CONVENING ORDER

**Recommendations**

1. \_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_

(SIGNATURE OF IO)

MARFORRES LEGAL SOP

UNIT LETTERHEAD

SSIC  
Code  
Date

SAMPLE LITIGATION-REPORT INVESTIGATION CONVENING ORDER

From: (CA)  
To: Captain \_\_\_\_\_ USMC  
Subj: LITIGATION-REPORT INVESTIGATION OF THE FIRE THAT OCCURRED  
AT QUARTERS #1, NSA NEW ORLEANS, LA ON OR ABOUT DATE  
Ref: (a) JAGMAN

1. Per reference (a), you are hereby appointed to investigate the circumstances surrounding the fire that occurred at Quarters #1, NSA New Orleans, LA, on or about (Date), and to prepare the related litigation-report. During the investigation, you will be under the direction and supervision of LtCol \_\_\_\_\_, USMC. Consult LtCol \_\_\_\_\_ before beginning your inquiry or collecting evidence. Read Chapter 2 of reference (a) before consulting LtCol \_\_\_\_\_.

2. This investigation is being convened and your report is being prepared in contemplation of litigation and for the express purpose of assisting attorneys representing interests of the United States in this matter. As such, it is privileged and should be discussed only with personnel who have an official need to know of its progress or results. If you have any doubt about the propriety of discussing the investigation with any particular individual, then you should seek guidance from LtCol \_\_\_\_\_.

3. Investigate all facts and circumstances surrounding the fire, including the cause of the fire, resulting injuries and damages, and any fault, neglect, or responsibility therefore. Report your findings to LtCol \_\_\_\_\_ by (Date), unless an extension of time is granted. Do not express any opinions or recommendations unless LtCol \_\_\_\_\_ directs you to do so. Label your report **"FOR OFFICIAL USE ONLY: ATTORNEY WORK PRODUCT,"** and take appropriate measures to safeguard it.

(Signature of CA)

Copy to:  
COMMARFORRES (SJA)

Figure 6-7 -- Sample Litigation Report Investigation Report  
Convening Order

MARFORRES LEGAL SOP

LITIGATION-REPORT INVESTIGATION CHECKLIST

**I. GETTING STARTED**

- \_\_\_\_\_ CA appointing order specifically directs a Litigation-Report, identifying the judge advocate under whose direction and supervision the investigation will be conducted.
- \_\_\_\_\_ IO consults with the assigned judge advocate **before** beginning the investigation.

**II. HANDLING WITNESSES (PRIOR TO OBTAINING ANY OF THE BELOW INFORMATION CONSULT WITH THE ASSIGNED JA.)**

NOTE: You may wish to gather and review other types of evidence before interviewing any witnesses.

- \_\_\_\_\_ IO presents all witness testimony with a Summary of Interview, signed only by the IO. Witnesses shall not be asked to make any written statements or to sign a statement that the investigator has prepared.
- \_\_\_\_\_ Indicate on the narrative statement that it represents an accurate summary of oral statements made by the witness.
- \_\_\_\_\_ Review your list of possible witnesses to ensure that you have interviewed all such witnesses.

## MARFORRES LEGAL SOP

### DRAFTING THE LITIGATION REPORT

#### I. PRELIMINARY STATEMENT

\_\_\_\_\_ Include this statement: "This report was prepared under the supervision of a JA in contemplation of litigation by or against the United States."

#### II. FINDINGS OF FACT

\_\_\_\_\_ IO makes no findings of fact regarding fault or cause of an accident or injury that is the subject of the Litigation-Report.

\_\_\_\_\_ IO makes no opinions or recommendations unless directed by the supervising JA.

\_\_\_\_\_ Mark " **FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT** " on the top center of each page.

\_\_\_\_\_ FAX/E-Mail a copy to the supervisory JA for final review.

\_\_\_\_\_ Report signed by the supervisory JA?

\_\_\_\_\_ IO signs the report.

MARFORRES LEGAL SOP

UNIT LETTERHEAD

SSIC  
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Date

SAMPLE LITIGATION-REPORT INVESTIGATION

**FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT**

From: LtCol \_\_\_\_\_, USMC  
To: Commanding Officer, Headquarters Battalion, Marine Forces Reserve

Subj: SAME AS SUBJECT ON CONVENING ORDER

Ref: (a) JAGMAN

Encl: (1) Convening order and modifications thereto (if any were issued)  
(2) Summary of statement of witness (Do not Include signed statements)  
(3) Summary of statement of witness  
(4) Description of (evidence found at scene of the fire)  
(5) Photograph of depicting \_\_\_\_\_

Preliminary Statement

1. Per reference (a) and in compliance with enclosure (1), the following litigation report investigation was conducted into the facts and circumstances surrounding (See subject line) that occurred on or about (date). All reasonably available evidence has been collected and the directives contained in enclosure (1) have been met. No difficulties were encountered in the conduct of this investigation. The supervisory judge advocate was LtCol. \_\_\_\_\_, USMC. This report was prepared under the supervision of a judge advocate in contemplation of litigation by or against the United States.

Findings of Fact

1. \_\_\_\_\_ [encl 0,0]

2. \_\_\_\_\_ [encl 0,0]

\_\_\_\_\_  
\_\_\_\_\_

MARFORRES LEGAL SOP

Subj: SAME AS SUBJECT ON CONVENING ORDER

**NOTE:** Opinions and recommendations are not made by the investigating officer unless directed by the supervising judge advocate. The supervising judge advocate should normally add appropriate opinions and recommendations with the assistance of the IO.

INVESTIGATING OFFICER

SUPERVISORY JUDGE ADVOCATE

MARFORRES LEGAL SOP

LOD/MISCONDUCT CHECKLIST

**DETERMINING TYPE OF INVESTIGATION**

- \_\_\_\_\_ Is a LOD/misconduct determination required?
- \_\_\_\_\_ Death incurred while on Active Duty?
- \_\_\_\_\_ Possible permanent disability?
- \_\_\_\_\_ Inability to perform duties for 24 hours or more?
- \_\_\_\_\_ Determine whether a PI or CI would be appropriate. (See 6003.11.e for guidance)
- \_\_\_\_\_ A command must convene an a CI when:
  - \_\_\_\_\_ The results of the PI indicate that the injury was incurred under circumstances which suggest a finding of "misconduct" might result. These circumstances include, but are not limited to, all cases in which a qualifying injury was incurred:
  - \_\_\_\_\_ While the member was using illegal drugs;
  - \_\_\_\_\_ While the member's blood alcohol content was .10 percent (.10%) by volume or greater. This does not preclude the convening of an investigation if the blood-alcohol percentage is lower than .10%, if the circumstances so indicate; and
  - \_\_\_\_\_ As a result of a bona fide suicide attempt.
- \_\_\_\_\_ The circumstances indicate that the injury was incurred under circumstances that suggest a finding of "not in line of duty" might result.
- \_\_\_\_\_ Was the service member in a UA/desertion status at the time of injury?
- \_\_\_\_\_ Was the service member in the brig with a dishonorable discharge at the time of the injury?
- \_\_\_\_\_ Was the service member in jail as a result of a felony conviction at the time of the injury?
- \_\_\_\_\_ There is a reasonable chance of permanent Disability.

Figure 6-11 -- LOD/Misconduct Checklist



## MARFORRES LEGAL SOP

\_\_\_\_\_ The injured member is in the Naval Reserve or the Marine Corps Reserve and the CO considers an investigation essential to ensure an adequate official record is made concerning the circumstances surround the incident.

### REQUIRED CONTENT OF THE LOD/MIS INVESTIGATION

\_\_\_\_\_ The PI or CI makes one of the following specific LOD/MIS determinations:

- \_\_\_\_\_ In the LOD/not due to misconduct
- \_\_\_\_\_ Not in the LOD/due to misconduct
- \_\_\_\_\_ Not in LOD/not due to misconduct

If a CI is necessary, it must clearly document all facts leading up to and connected with the injury or death. Some of the information to be addressed might include:

\_\_\_\_\_ Identifying data of all persons, military or civilian, killed or injured.

\_\_\_\_\_ Name, sex, age.

\_\_\_\_\_ Military grade or rate, regular or reserve, armed force, station or residence.

\_\_\_\_\_ Experience/expertise.

\_\_\_\_\_ Civilian title, business or occupation, address.

\_\_\_\_\_ Experience/expertise.

\_\_\_\_\_ All relevant records must be obtained, including: military or civilian police accident reports, pertinent hospitalization or clinical records, death certificates, autopsy reports, records of coroners' inquest or medical examiners' reports, and pathological, histological, and toxicological studies.

\_\_\_\_\_ Place of occurrence, site and terrain, include photographs, maps, charts, diagrams or other relevant exhibits.

\_\_\_\_\_ Duty status of injured person: leave, liberty, unauthorized absence (UA), active duty, active duty for training, or inactive duty for training at time of injury.

Figure 6-11 -- LOD/Misconduct Checklist

## MARFORRES LEGAL SOP

- \_\_\_\_\_ Whether any UA status at time of injury materially interfered with his/her military duty.
- \_\_\_\_\_ Nature/extent of injuries, including description of body parts injured.
- \_\_\_\_\_ Extent of hospitalization.
- \_\_\_\_\_ Cost from any civilian facilities.
- \_\_\_\_\_ Amount of time "lost".
- \_\_\_\_\_ Physical factors and impairment.
  - \_\_\_\_\_ Tired (working excessive hours), hungry, on medication (prescribed or unauthorized), ill or experiencing dizziness, headaches or nausea, exposed to severe environmental extremes.
  - \_\_\_\_\_ Period of alcohol or habit-forming drug impairment.
    - \_\_\_\_\_ Individual's general appearance, behavior, rationality of speech, and muscular coordination.
    - \_\_\_\_\_ Quantity and nature of intoxicating agent used.
    - \_\_\_\_\_ Period of time in which consumed.
    - \_\_\_\_\_ Results of blood, breath, urine or tissue test for intoxicating agents.
    - \_\_\_\_\_ Lawfulness of intoxicating agent.
- \_\_\_\_\_ Mental factors.
  - \_\_\_\_\_ Emotionally upset (angry, depressed, moody, tense).
  - \_\_\_\_\_ Mentally preoccupied with unrelated matters.
- \_\_\_\_\_ Motivation.
  - \_\_\_\_\_ Knowledge of/adherence to standard procedures.
  - \_\_\_\_\_ Attempted suicide (genuine intent to die v. gesture or malingering). See JAGMAN 0225.
  - \_\_\_\_\_ Mental disease or defect. Psychiatric evaluation warranted?

Figure 6-11 -- LOD/Misconduct Checklist

## MARFORRES LEGAL SOP

- \_\_\_ Training:
  - \_\_\_ Formal/on the job.
  - \_\_\_ Adequacy.
  - \_\_\_ Engaged in tasks different from those in which trained.
  - \_\_\_ Engaged in tasks too difficult for skill level.
- \_\_\_ Emergency responses/reaction time.
- \_\_\_ Supervision (adequate/lax/absent).
- \_\_\_ Design factors.
- \_\_\_ Equipment's condition, working order.
  - \_\_\_ Operating unfamiliar equipment/controls.
  - \_\_\_ Operating equipment with controls that function differently than expected due to lack of standardization.
  - \_\_\_ Unable to reach all controls from his/her work station and see and hear all displays, signals, and communication.
  - \_\_\_ Provided insufficient support manuals.
  - \_\_\_ Using support equipment that was not clearly identified and likely to be confused with similar but noncompatible equipment.
- \_\_\_ Environment factors:
  - \_\_\_ Harmful dusts, fumes, gases without proper ventilation.
  - \_\_\_ Working in a hazardous environment without personal protective equipment.
  - \_\_\_ Unable to hear and see all communications and signals.
  - \_\_\_ Exposed to temperature extremes that could degrade efficiency, cause faintness, stroke or numbness.

Figure 6-11 -- LOD/Misconduct Checklist

## MARFORRES LEGAL SOP

- \_\_\_\_\_ Suffering from eye fatigue due to inadequate lighting or glare.
- \_\_\_\_\_ Visually restricted by dense fog, rain, smoke or snow.
- \_\_\_\_\_ Exposed to excessive noise/vibration levels.
- \_\_\_\_\_ Personnel protective equipment.
- \_\_\_\_\_ Using required equipment for the job (i.e., seatbelts, safety glasses, hearing protectors).
- \_\_\_\_\_ Not using proper equipment due to lack of availability (identify).
- \_\_\_\_\_ Not using proper equipment due to lack of comfort or conflict with "Rambo" image (identify).
- \_\_\_\_\_ Using protective equipment that failed and caused additional injuries (identify).
- \_\_\_\_\_ Hazardous conditions.
- \_\_\_\_\_ Inadequate/missing guards, handrail, ladder treads, protective mats, safety devices/ switches, skid proofing.
- \_\_\_\_\_ Jury-rigged equipment.
- \_\_\_\_\_ Use of improper non-insulated tools.
- \_\_\_\_\_ Incorrectly installed equipment.
- \_\_\_\_\_ Defective/improperly maintained equipment.
- \_\_\_\_\_ Slippery decks or ladders, obstructions.
- \_\_\_\_\_ Improper clothing (leather heels, conventional shoes vice steel-toed shoes, loose fitting clothes, no shirt, conventional eyeglasses vice safety glasses).

### **ROUTING THE INVESTIGATION**

- \_\_\_\_\_ Report the results of the PI/CI to the COMMARFORRES (SJA) via the chain of command. All LOD/MIS determination must be endorsed by the CG.

Figure 6-11 -- LOD/Misconduct Checklist

MARFORRES LEGAL SOP

- \_\_\_\_\_ Ensure medical receives a copy of the PI.
- \_\_\_\_\_ If the CA determines this injury was incurred "in the LOD, not due to misconduct, ensure medical record entries stating as such are made.

MARFORRES LEGAL SOP

Rights Advisement Forms

ARTICLE 31 RIGHTS

Name: \_\_\_\_\_ Rank/Rate: \_\_\_\_\_ Activity: \_\_\_\_\_

Unit: \_\_\_\_\_ Telephone number: \_\_\_\_\_

I have been advised that I may be suspected of the offense(s) of: \_\_\_\_\_  
and that: \_\_\_\_\_

- ☐ I have the right to remain silent.
- ☐ Any statements I do make may be used as evidence against me in trial by court-martial.
- ☐ I have the right to consult with lawyer counsel prior, to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expenses, a military lawyer appointed to act as my counsel without cost to me, or both.
- ☐ I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.
- ☐ I have the right to terminate this interview at any time.

**WAIVER OF RIGHTS**

- ☐ I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that:
  - ☐ I expressly desire to waive my right to remain silent.
  - ☐ I expressly desire to make a statement.
  - ☐ I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to questioning.
  - ☐ I expressly do not desire to have such a lawyer present with me during this interview.
  - ☐ This acknowledgment and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure of coercion of any kind having been used against me.

\_\_\_\_\_  
(Witness's signature and date)

\_\_\_\_\_  
(Member's signature and date)

Understanding my rights under U.C.M.J. Article 31, I wish to make the following statement:

MARFORRES LEGAL SOP

WARNING ADVISEMENT ABOUT STATEMENTS  
REGARDING ORIGIN OF DISEASE OR INJURY  
(JAGMAN 0220)

I, \_\_\_\_\_, have been advised that:

Questions have arisen concerning whether or not my injury/disease, sustained or discovered on (Date) was incurred in the line of duty or as a result of my own misconduct;

In the event such injury/death is determined to have been incurred not in the line of duty or as a result of my own misconduct, I will be required to serve for an additional period beyond my present enlistment to make up for the time of duty lost;

Lost duty time will not count as creditable service for pay entitlement purposes;

I may be required to forfeit some pay (where absence from duty in excess of one day immediately follows intemperate use of liquor or habit-forming drugs);

If I am permanently disabled and that disability is determined to have been the result of misconduct or was incurred not in the line of duty, I may be barred from receiving disability pay or allowances, as well as veteran's benefits;

I may not be required to give a statement relating to the origin, incidence, or aggravation of any disease/injury that I may have.

I do/do not desire to submit a statement.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

\_\_\_\_\_  
Witness Name/Rate/Grade/Unit/Telephone Number

MARFORRES LEGAL SOP

PRIVACY ACT STATEMENT

Name: \_\_\_\_\_ Rank/Rate: \_\_\_\_\_ Activity: \_\_\_\_\_  
Unit: \_\_\_\_\_ Telephone number: \_\_\_\_\_

Today, (Date), I acknowledge that I have received the following advisement under the guidelines of the Privacy Act.

This statement is provided in compliance with the provisions of the Privacy Act of 1974 (Public Law 93-579) which requires that Federal agencies must inform individuals who are requested to furnish personal information about themselves as to certain facts regarding the information requested below.

1. AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 972, 1201-1221, 2733, 2734-2734b., 2737, 5013, 5031-5036, 5131-5150, 5947, 6148, 7205, 7622-7623; 28 U.S.C. 1346, 2671-2680; 31 U.S.C. 240-243, 3521-3531, 3701-3702, 3717-3718; 37 U.S.C. 802; 38 U.S.C. 105; 42 U.S.C. 2651-2653; 44 U.S.C. 3101; 49 U.S.C. 1901.

2. PRINCIPAL PURPOSES. The information which will be solicited is intended principally and may be used for the following purposes:

a. Determinations on the status of personnel regarding entitlements to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistments, date of expiration of active obligated service, and accrual of annual leave.

b. Determinations on disciplinary or punitive action.

c. Determinations on liability of personnel for losses of, or damage to, public funds or property.

d. Evaluation of petitions, grievances, and complaints.

e. Adjudication, pursuit, or defense of claims for or against the Government or among private parties.

f. Other determinations, as required, in the course of naval administration.

g. Public information releases.



## MARFORRES LEGAL SOP

h. Evaluation of procedures, operations, material, and designs by the Navy and contractors, with a view to improving the efficiency and safety of the Department of the Navy.

3. ROUTINE USES: In addition to being used within the Department of the Navy and Defense for the purpose(s) indicated above, records of investigations are routinely furnished, as appropriate, to the Department of Veterans Affairs for use in determinations concerning entitlement to veterans' and survivors' benefits; to Servicemen's Group Life Insurance administrators for determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters; and to the Department of Justice for use in litigation involving the Government. Additionally, such investigations are sometimes furnished to agencies of the Department of Justice and to State or local law enforcement and court authorities for use in connection with civilian criminal and civil court proceedings. The records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. The records are provided to contractors for use in connection with settlements, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems. The records are also furnished to agencies of the Federal, State, or local law enforcement authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

### 4. MANDATORY/VOLUNTARY DISCLOSURE, CONSEQUENCES OF REFUSING TO DISCLOSE:

a. Where an individual is a subject of an investigation for purpose 2a or 2b, above: Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have the [personnel determination) [disciplinary determinations] in paragraph 2, above, resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination if the record does not contain sufficient evidence to overcome the presumption in your favor. If the completed record does contain sufficient evidence to overcome the presumption in your favor,

## MARFORRES LEGAL SOP

however, your election not to provide the requested information possible could prevent the investigation from obtaining evidence that may be needed to support a favorable determination.

b. Where an individual is a subject of an investigation for purpose 2c, above: Disclosure is voluntary, and if you do not provide the requested information, any determination as to whether you should be held peculiarly liable for repayment of the Government's loss would be based on the other evidence in the investigative record, which possibly might not support a favorable determination.

c. Where the individual is a claimant or potential claimant in an investigation for purpose 2e, above: Disclosure is voluntary, but refusal to disclose the requested information could prevent the investigation from obtaining sufficient information to substantiate any claim which you have made or may make against the Government as a result of the incident under investigation.

d. Where the individual was treated at Government expense for injuries caused by third parties in connection with a matter being investigated for purpose 2e, above: Disclosure is voluntary, but refusal to disclose the requested information could result in a requirement for you to assign to the Government your medical care claims against third parties in connection with the incident, or authorize withholding of the records of your treatment in naval medical facilities.

e. In any other case: Disclosure is voluntary, and if you do not provide the requested information, and determinations or evaluations made as a result of the investigation will be made on the basis of the evidence that is contained in the investigative record.

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MARFORRES LEGAL SOP

AIRCRAFT ACCIDENT CHECKLIST

NOTE. PARTICIPATION OF THE NATIONAL TRANSPORTATION SAFETY BOARD (NTSB) OR THE FEDERAL AVIATION AGENCY (FAA) IS COVERED BY OPNAVINST 3750.15 (SERIES). REMEMBER, THE JAGMAN IO MUST MAINTAIN AND PROTECT THE PRIVILEGED NATURE OF THE AMI AND SHALL NOT RELY UPON THE AMI NOR OBTAIN ANY EVIDENCE FROM THE AMI NOR DISCUSS THE CASE WITH THE AMI INVESTIGATOR(S). SEE JAGMAN 0241b.

- \_\_\_\_\_ If a possibility exists that witness will testify before the AMI and the JAGMAN investigation, the JAGMAN IO shall explain to such witnesses the reasons for the apparent duplication of effort. This is particularly important with non-military witnesses. The explanation shall cover:
  - \_\_\_\_\_ The different objectives of the two investigations.
  - \_\_\_\_\_ The reasons why procedures vary.
  - \_\_\_\_\_ The need to preserve the privileged nature of the aircraft accident safety investigation.
  - \_\_\_\_\_ The fact that since neither command nor administrative action may alter the privileged character of statements provided to the aircraft accident safety investigation, such statements will not be available to the JAGMAN investigation from any official source.
- \_\_\_\_\_ Identity of the pilot(s), co-pilot(s), naval flight officer(s) (NFO), air crew and any passengers.
- \_\_\_\_\_ Background, history, training, experience of the pilot(s), co-pilot(s), naval flight officer(s), and air crew(s).
- \_\_\_\_\_ Their degree of familiarity with the type of aircraft involved.
- \_\_\_\_\_ The military or civilian status of all personnel on board, e.g., Regular, Reserve, or retired; active duty, inactive duty, inactive duty training; TAD, TDY, leave, liberty.
- \_\_\_\_\_ Type, model, and bureau number of the aircraft involved.
- \_\_\_\_\_ Identification of the squadron, detachment, or unit authorizing the flight and the official who authorized the flight.

Figure 6-15 -- Aircraft Accident Checklist

## MARFORRES LEGAL SOP

- \_\_\_\_\_ If a privately-owned or rented aircraft was involved, identify the owner, authorization for the flight, existence of private insurance, and extent of damage.
- \_\_\_\_\_ The identity of all individuals who were killed, injured, or who suffered property damage as a result of the mishap, including:
  - \_\_\_\_\_ Name, age, address (home and work), telephone number, occupation, injured and/or deceased.
- \_\_\_\_\_ A complete description of how injuries occurred (refer to JAGMAN, Chapter II, Part F, for special considerations in death cases).
- \_\_\_\_\_ Sociological, psychological, and human factors related to the accident, including:
  - \_\_\_\_\_ Potential stress factors, fatigue, use of medication, or intoxication.
- \_\_\_\_\_ Type, duration, and purpose of the flight, briefing of the pilot, and other pertinent information regarding the particular flight, including:
  - \_\_\_\_\_ The use of night vision goggles.
  - \_\_\_\_\_ Other mission-specific factors relevant to aircraft or air crew equipment or performance.
  - \_\_\_\_\_ Weather conditions throughout the flight.
  - \_\_\_\_\_ Preflight history of the aircraft.
  - \_\_\_\_\_ Compliance or noncompliance with pertinent technical directives, including:
    - \_\_\_\_\_ Flight hours since the last overhaul.
    - \_\_\_\_\_ Discrepancies noted on recent "Yellow Sheets", VIDS/MAF Forms; OPNAVINST 4790.2 [Series].
    - \_\_\_\_\_ Flight hours since the last intermediate check.
  - \_\_\_\_\_ Description of flight path and maneuvers of the aircraft during the flight, including manner of descent and impact.

Figure 6-15 -- Aircraft Accident Checklist

## MARFORRES LEGAL SOP

- \_\_\_\_\_ Positions of external control surfaces (landing gear, canopy, etc.) during flight.
- \_\_\_\_\_ Presence condition, and use of safety, communication, escape, and survival equipment.
- \_\_\_\_\_ Post-accident examination of the aircraft.
- \_\_\_\_\_ Detailed description of all damage to the aircraft, including:
  - \_\_\_\_\_ Wreckage diagrams, disassembly and inspection reports, wreckage photographs, and data on engine, fuselage, and control surfaces.
- \_\_\_\_\_ Examination of the scene of the accident, to include:
  - \_\_\_\_\_ Its precise location.
  - \_\_\_\_\_ A description of the terrain.
- \_\_\_\_\_ A complete listing and cost of damage or destroyed Government and non-Government property.
- \_\_\_\_\_ Description of rescue operation employed, their effectiveness, and any difficulties encountered.
- \_\_\_\_\_ All instructions in effect at the time of the accident concerning procedures relating to this particular flight, including applicable local and regional flight rules governing the flight and copies of air charts in effect and in use.
- \_\_\_\_\_ In the case of deaths resulting from the accident, the precise medical cause thereof, (substantiated by medical records), to include line of duty/misconduct determinations for injuries to naval personnel, if required.
- \_\_\_\_\_ Involvement of other aircraft, if any.
- \_\_\_\_\_ The roles of supervisory, support, and controlling personnel.
- \_\_\_\_\_ When the evidence concerning the accident is sufficient to do so, an opinion or opinions as to the cause or the causes of the accident.

Figure 6-15 -- Aircraft Accident Checklist

## MARFORRES LEGAL SOP

\_\_\_\_\_ When the evidence is not sufficient to form an opinion or opinions as to the cause or causes of the accident, a description of those factors, if any, which in the opinion of the investigator substantially contributed to the accident.

Figure 6-15 -- Aircraft Accident Checklist

## MARFORRES LEGAL SOP

### MOTOR VEHICLE ACCIDENT CHECKLIST

- \_\_\_\_\_ Vehicle(s) identified, including vehicle identification number (VIN), license plate number, make, model, year, and color.
- \_\_\_\_\_ Identify the driver(s) and owner(s), to include the name, age, addresses (home and work), and telephone numbers.
- \_\_\_\_\_ For military members indicate their military status at the time of the accident (e.g., active duty, TAD, leave, liberty, etc.), their grade/rank, and the name, address, location.
- \_\_\_\_\_ If an individual died or is incapacitated as a result of the accident, provide similar identifying information for the next-of-kin or legal representative.
- \_\_\_\_\_ If a Government vehicle was involved, identify the unit to which the vehicle was assigned, and the individual at the unit who authorized use of the vehicle, and its authorized purpose.
- \_\_\_\_\_ Private vehicle involved: name, address, policy numbers, and telephone numbers of the insurer of the vehicle, including the amount and type of insurance carried.
- \_\_\_\_\_ Location of the accident, (e.g., highway number, direction of travel, milepost number, street name, intersection).
- \_\_\_\_\_ Speed of the vehicles involved as evidenced by testimony of witnesses, skid marks, condition of road, and the damage to the vehicles.
- \_\_\_\_\_ Road and terrain factors, road characteristics.
- \_\_\_\_\_ Any obstructions to the driver's vision.
- \_\_\_\_\_ Actions of other vehicles involved in the accident, including any part played by them in creating the conditions that resulted in the accident.
- \_\_\_\_\_ Traffic conditions at the scene and their effect on the accident.

Figure 6-16 -- Motor Vehicle Accident Checklist

## MARFORRES LEGAL SOP

- \_\_\_\_\_ Traffic laws and regulations in force pertinent to the accident, including traffic safety devices, signs, and markings (e.g., school zone, no passing zone, railroad crossing, reduced speed limit).
- \_\_\_\_\_ Any regulations to use safety devices installed in the vehicles (e.g., seat belts, child carriers).
- \_\_\_\_\_ Copies of statutes, ordinances, or regulations should be made an enclosure.
- \_\_\_\_\_ Mechanical condition of the vehicles involved.
- \_\_\_\_\_ If a mechanical defect or condition (e.g., faulty or worn brakes/tires), is determined to have contributed to the accident, include the relevant maintenance history of the vehicle.
- \_\_\_\_\_ Physical condition of the driver(s), including intoxication, fatigue, use of medications or drugs, or other medical conditions, number of hours of sleep prior to the accident, number of hours worked.
- \_\_\_\_\_ The amount of alcohol consumed, results of any blood alcohol or other test for intoxication.
- \_\_\_\_\_ Any medications or drugs taken prior to the accident.
- \_\_\_\_\_ Any unusual stress or abnormal condition that might have affected the driver's alertness.
- \_\_\_\_\_ The opinion section should address any reasonable inferences that may be drawn from these facts relevant to the cause of the accident.
- \_\_\_\_\_ Driving experience of the driver(s) both generally and in the type of vehicles being driven, to include the state which licensed the driver.
- \_\_\_\_\_ Any previous loss of driving privileges and driving-related convictions.
- \_\_\_\_\_ Safety devices installed and whether they were being used at the time of the accident.

Figure 6-16 -- Motor Vehicle Accident Checklist



MARFORRES LEGAL SOP

- \_\_\_\_\_ Conduct of passenger(s). Opinions may include reasonable inferences on the effect of any passenger's conduct on the driver(s).
- \_\_\_\_\_ Facts and opinions relevant to knowledge by any passenger of any impairment of the driver at the time the passenger entered or had a reasonable opportunity to leave the vehicle.

MARFORRES LEGAL SOP

LOSS OR EXCESS OF GOVERNMENT FUNDS OR PROPERTY CHECKLIST

NOTE ON LOSS OF FUNDS: CHAPTER 6, SECTION 0607, DEPARTMENT OF DEFENSE FINANCIAL MANAGEMENT REGULATION (DOD 7000.14-R), VOLUME 5, DISBURSING POLICY AND PROCEDURES, PROVIDES SPECIFIC PROCEDURES, FINDINGS AND RECOMMENDATIONS FOR INVESTIGATION OF MAJOR LOSSES OF FUNDS DUE TO PHYSICAL LOSS, OR ILLEGAL, INCORRECT, OR IMPROPER PAYMENT. COMMAND INVESTIGATIONS APPOINTED UNDER THE JAGMAN ARE USED TO INVESTIGATE CASES OF MAJOR LOSSES OF FUNDS, DEFINED AS THOSE LOSSES OF \$750.00 OR MORE OR ANY PHYSICAL LOSS WHERE THERE IS EVIDENCE OF FRAUD WITHIN THE ACCOUNTING FUNCTION, REGARDLESS OF THE DOLLAR AMOUNT.

NOTE ON LOSS OF PROPERTY: FOR LOSSES ON GOVERNMENT PROPERTY, THE COMMAND MAY USE A SURVEY PROCEDURE UNDER APPLICABLE NAVY OR MARINE CORPS REGULATIONS IN LIEU OF A JAGMAN INVESTIGATION. THE FINANCIAL LIABILITY INVESTIGATION OF PROPERTY LOSS (DD FORM 200) MEETS THE INVESTIGATIVE REQUIREMENTS IN MOST SITUATIONS.

\_\_\_\_\_ Any accountable individual must receive the special notice contained in JAGMAN 0249e.

\_\_\_\_\_ What items were *lost* or found in excess and the exact dollar value of the loss or excess, e.g., property, vouchers, cash, and so forth.

\_\_\_\_\_ The nature of the loss or excess (inventory gain or loss, cash shortage, or overage, etc.).

\_\_\_\_\_ In cases of loss of funds, whether the loss was

\_\_\_\_\_ Loss of proceeds of sale of Government property.

\_\_\_\_\_ Physical loss of funds (i.e., embezzlement or fraudulent acts of subordinate finance personnel).

\_\_\_\_\_ Result of illegal or improper payment (i.e., payments on forged checks or vouchers).

\_\_\_\_\_ How the loss or excess is being carried in the command's accounts.

\_\_\_\_\_ Identity and position of the accountable officer.

Figure 6-17 -- Loss or Excess of Government Funds or Property Checklist

## MARFORRES LEGAL SOP

- \_\_\_\_\_ Identity and position of any other person who had custody of the funds or property.
- \_\_\_\_\_ The general reputation of the accountable individual for honesty and care in the handling and safeguarding of funds or property entrusted to them.
- \_\_\_\_\_ The experience and training of the accountable individual in the handling of funds or property.
- \_\_\_\_\_ The workload, including collateral duties, of the accountable individual at the time of the irregularity.
- \_\_\_\_\_ A description, with diagrams where appropriate, of the physical working conditions of the accountable individual who incurred the loss or excess.
- \_\_\_\_\_ Physical security arrangements and devices.
- \_\_\_\_\_ Security containers and persons with access to them and whether they were being used properly at the time of the irregularity.
- \_\_\_\_\_ Internal control procedures in effect in the unit, section, department, or office where the irregularity occurred, and a statement whether they were being applied properly at the time of the irregularity.
- \_\_\_\_\_ Information on recent inspections, assist visits, management control reviews, or other evaluations of procedures.
- \_\_\_\_\_ Identification of the regulations pertinent to the handling of the property or funds involved and were such regulations followed?
- \_\_\_\_\_ A description of remedial measures taken to prevent recurrence of the irregularity.

Figure 6-17 -- Loss or Excess of Government Funds or Property Checklist

MARFORRES LEGAL SOP

CLAIMS FOR OR AGAINST THE GOVERNMENT CHECKLIST

**NOTE: CA'S SHOULD CONSULT WITH THE SJA MARFORRES REGARDING THE TYPE OF INVESTIGATION TO CONVEINE IN CASES IN WHICH THERE IS A SUBSTANTIAL POSSIBILITY OF A CLAIM FOR OR AGAINST THE GOVERNMENT.**

\_\_\_\_\_ The identity of individuals involved, including name, rank/grade, unit, age, address (home and work), telephone number, occupation.

\_\_\_\_\_ How they were involved?

\_\_\_\_\_ Killed as a result of the incident (identifying information of the next-of-kin or legal representative must be provided).

\_\_\_\_\_ Injured party.

\_\_\_\_\_ Owner of property damaged.

\_\_\_\_\_ Military member whose acts or omissions are alleged to have caused the harm.

\_\_\_\_\_ Witness.

\_\_\_\_\_ Information on how those involved may be located.

\_\_\_\_\_ Permanent address that will be accurate for at least 5 years after the accident.

\_\_\_\_\_ Indicate each individual's status.

\_\_\_\_\_ Military: Regular or Reserve, on active duty, TAD, leave, liberty, etc., at the time of the incident.

\_\_\_\_\_ Civilians: Federal employee, personal services contractor employed by an independent contractor, etc.

\_\_\_\_\_ If maintenance or training is involved, identify the individual responsible for the maintenance or training issue.

\_\_\_\_\_ Nature of the claim (i.e., wrongful death, personal injuries, property damage).

Figure 6-18 -- Sample Claims for or Against the Government Checklist

MARFORRES LEGAL SOP

- \_\_\_\_\_ A factual description of how the individual(s) was injured,
  - \_\_\_\_\_ What equipment was being used.
  - \_\_\_\_\_ Who was operating the equipment.
  - \_\_\_\_\_ Who was supervising (or should have been supervising).
  - \_\_\_\_\_ Whether equipment failed or was operated incorrectly.
  - \_\_\_\_\_ If equipment failure, the maintenance history of the equipment.
- \_\_\_\_\_ If the injury occurred on Government property.
  - \_\_\_\_\_ The condition of the property.
  - \_\_\_\_\_ Who is responsible for the property's upkeep.
  - \_\_\_\_\_ Authority for the injured party to be present on government property.
- \_\_\_\_\_ The nature and extent of personal injuries.
- \_\_\_\_\_ Nature and extent of treatment.
  - \_\_\_\_\_ Number of days hospitalized.
  - \_\_\_\_\_ Name and address of all treating hospitals and medical facilities.
  - \_\_\_\_\_ Amount of medical, dental, and hospital expenses incurred, supported by itemized bills or receipts for payment.
- \_\_\_\_\_ If an individual died.
  - \_\_\_\_\_ Time of death relative to the injury.
  - \_\_\_\_\_ Intervening treatment and state of consciousness.

Figure 6-18 -- Sample Claims for or Against the Government Checklist

## MARFORRES LEGAL SOP

- \_\_\_\_\_ Cause of death as established by autopsy.
- \_\_\_\_\_ Pre-existing medical conditions.
- \_\_\_\_\_ Whether the claimant has insurance for this type of damage or injury.
  - \_\_\_\_\_ Insurance company.
  - \_\_\_\_\_ Policy number.
  - \_\_\_\_\_ Policy provisions relevant to this claim or incident.
  - \_\_\_\_\_ Extent of coverage and limits on liability.
  - \_\_\_\_\_ Whether a claim has been or will be made against the insurance carrier, the status of any such claim.
- \_\_\_\_\_ Names and addresses of other owners, if claimant is not the sole owner of the property.
- \_\_\_\_\_ Existence of any police or other investigative report, name and addresses of investigating officer and unit, custodian of original investigation (provide a copy of any police report as an enclosure).
- \_\_\_\_\_ Whether civilian or military criminal charges were filed.
  - \_\_\_\_\_ Jurisdiction in which they were filed.
  - \_\_\_\_\_ Status or final disposition of those charges.
- \_\_\_\_\_ Existence of any law, regulation, or order relevant to the incident and whether it was violated.
  - \_\_\_\_\_ If a stray animal was involved, whether the jurisdiction has an "open range" law (attach a copy as an enclosure).

### REQUIRED OPINIONS

- \_\_\_\_\_ An opinion whether any military personnel involved were acting in the scope of their employment at the time of the incident.

Figure 6-18 -- Sample Claims for or Against the Government  
Checklist

## MARFORRES LEGAL SOP

\_\_\_\_\_ An opinion whether a claim is likely to be filed, the amount likely to be claimed, and names and addresses of any potential claimants and their legal representatives.

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MARFORRES LEGAL SOP

CHAPTER 7

CLAIMS AGAINST THE GOVERNMENT

	<u>PARAGRAPH</u>	<u>PAGE</u>
CLAIMS GENERALLY . . . . .	7000	7-3
SCOPE. . . . .	7001	7-3
RESPONSIBILITIES . . . . .	7002	7-3
FILING A CLAIM . . . . .	7003	7-4
REQUIRED DOCUMENTATION FOR SPECIFIC TYPES OF CLAIMS . . . . .	7004	7-4
PROCEDURES FOR PROCESSING CLAIMS . . . . .	7005	7-5
INVESTIGATING CLAIMS . . . . .	7006	7-6

FIGURE

	<u>PAGE</u>
7-1      STANDARD FORM 95	7-7

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## MARFORRES LEGAL SOP

### CHAPTER 7

#### CLAIMS AGAINST THE GOVERNMENT

7000. CLAIMS GENERALLY. Claims involving the activities of the U.S. Government are governed by a complex system of statutes, regulations, and procedures. The majority of actionable claims filed against the U.S. Government due to actions of MARFORRES units will be adjudicated in accordance with the Federal Tort Claims Act (FTC), 28 U.S.C. §§ 1346(b), 2671-2672 or the Military Claims Act (MCA), 10 U.S.C. § 2733. Claims filed by military members and Federal employees for personal property that is lost, damaged, or destroyed incident to service are adjudicated in accordance with the Personnel Claims Act (PCA), 31 U.S.C. § 3721.

7001. SCOPE. This chapter addresses the procedures and responsibilities for processing and investigating claims filed against the U.S. Government for personal injury, death, and property damage caused by the negligent conduct of MARFORRES military personnel and civilian employees acting within the scope of their Federal employment. This chapter only addresses claims arising in the United States and its territories. It does not discuss claims arising in foreign countries or claims brought by military personnel or Federal Government employees. If a MARFORRES unit receives a claim from an incident arising in a foreign country or a claim filed by a military person or Federal employee, the unit should contact the MARFORRES, SJA, Claims and Investigations Section for detailed guidance on processing the claim. The MARFORRES, SJA does not process, or otherwise assist, servicemembers in filing their personnel claims. Thus, active duty servicemembers, Reserve members on active duty and Federal employees who have questions regarding filing claims against the U.S. Government should be directed to JAGINST 5890.1.

#### 7002. RESPONSIBILITIES

1. I-I's, Site Commanders, and COs are responsible for the expeditious processing of all claims received by their command. Additionally, I-I's, Site Commanders, and COs are responsible for the expeditious investigation of claims arising from the activities of their commands.

2. The MARFORRES Claims and Investigations Officer advises MARFORRES commands regarding the processing and investigation of claims filed against the U.S. Government.

3. The JAG of the Navy is responsible for adjudicating and paying all claims made against MARFORRES commands. Within the United States, claims are adjudicated at one of three regional NLSOs based on the geographic location of the incident giving rise to the claim. See figure 13-1 MCO P5800.16\_ (LEGADMINMAN).

#### 7003. FILING A CLAIM

1. A claim against the U.S. Government should be presented in writing on an SF-95 and must be filed within 2 years of the incident giving rise to the claim. MARFORRES commands should maintain SF-95 forms on file and provide them to the individual seeking to file a claim against the U.S. Government. A reproducible SF-95 and instructions for completing the form are provided in figure 7-1.

2. Under no circumstances should a military member recommend or otherwise assist a civilian in the preparation of a claim against the U.S. Government unless that civilian has first initiated or requested information regarding reimbursement for damages.

3. Claimants should be given instructions on how to properly fill out and file their claim. Additionally, the claimant should be made aware that, once the claim is properly presented in accordance with the guidance contained herein, it will be forwarded for adjudication, via MARFORRES SJA, to the appropriate NLSO for final disposition.

4. The claim and all other documents requiring signatures, must be signed by the claimant personally or by a duly authorized agent. If signed by an agent or legal representative, the claim shall indicate the title or capacity of the person signing and be accompanied by evidence of appointment.

#### 7004. REQUIRED DOCUMENTATION FOR SPECIFIC TYPES OF CLAIMS

1. When completing the SF-95, the claimant should clearly and succinctly describe the incident giving rise to the claim; the actions of the Government employee that caused the personal injury, death, or property damage; and the basis for Government liability. Additionally, claimants should provide all documentation supporting their claim. Claimants submitting incomplete claim forms will be notified, in writing, that properly completed forms, or the necessary supporting documentation, must be received within a reasonable period of time or the claim will be denied or paid only in the amount substantiated by the available information.

2. Persons submitting claims against the U.S. Government for personal injury, death, or property damage caused by the

negligent act of military personnel and civilian employees acting within the scope of their Federal employment should refer to the instructions on the back side of the SF-95. See figure 7-1.

7005. PROCEDURES FOR PROCESSING CLAIMS

1. Once a MARFORRES unit receives a completed SF-95, with supporting documentation, where the claim arises from the activities of the command, the command shall:

- a. Stamp or mark the date and time of receipt;
- b. Make a copy of the claim and all documentation submitted;
- c. Forward the original SF-95 and supporting documentation, within 2 business days, to the MARFORRES OSJA (Attn: Claims and Investigations); and
- d. Complete and forward an investigation of the claim via the chain of command to the MARFORRES SJA within 14 business days of receipt of the SF-95. See paragraph 7006 below.

2. If the claim arose from the activities of another Marine Corps or Navy command, the MARFORRES command receiving the SF-95 shall:

- a. Stamp or mark the date and time of receipt;
- b. Make a copy of the claim and all documentation submitted; and
- c. Forward the original SF-95 and supporting documentation, within 2 business days, to the MARFORRES OSJA (Attn: Claims and Investigations).

3. If the claim arose from the activities of another branch of the Armed Forces, the command receiving the SF-95 shall forward the original SF-95 and supporting documentation, within 2 business days, to the MARFORRES OSJA (Attn: Claims and Investigations). The MARFORRES command does not need to copy the claim prior to forwarding and the MARFORRES command should not stamp or mark the date and time of receipt.

4. Upon receipt of all claims, the MARFORRES OSJA will send a letter to the claimant advising that the SF-95 was received and will be forwarded to the appropriate NLSO or other responsible command. The letter will include the NLSO or other responsible command's address and telephone number.

5. The timeline for settling claims will vary depending on the circumstances of each case. Claims are normally adjudicated and settled within 30 to 60 days from the time the NLSO receives the claim. Any questions regarding the status of a claim may be referred to the MARFORRES OSJA Claims and Investigations Officer.

#### 7006. INVESTIGATING CLAIMS

1. Every incident that may result in, or has resulted in, a claim against the U.S. Government, must be investigated by a JAGMAN investigation. The type of investigation will vary with the circumstances of the particular case; however, normally a litigation-report investigation will be required. At a minimum, the investigation must establish the basic facts surrounding the incident so that higher authority can determine what caused the damage, what is the actual damage, and whether the servicemember involved was in the scope of employment when the incident occurred. Opinions on the possible liability of the United States under any of the claims statutes shall not be addressed. And issues such as, "Who was at fault?" and "Was either party negligent?" should not be addressed unless the convening authority determines they are pertinent to the investigation for reasons not related to any potential claims. In cases where the incident is minor, there is no personal injury, and the Government's responsibility is clearly established by the facts, a preliminary inquiry will be sufficient. For example, a Government tactical vehicle backs into a civilian vehicle that is legally parked causing less than \$500.00 of damage.

2. I-I's, Site Commanders, and COs are not required and should not wait until a claim is filed to investigate an incident that occurred during the conduct of official military business that results in personal injury, death, or damage to personal property of a civilian. In order to protect the U.S. Government and document the evidence, MARFORRES commands should initiate an investigation immediately whenever they become aware of an incident that occurred during the conduct of official military business that may result in a claim against the U.S. Government.

4. The MARFORRES, OSJA will advise the command whether a preliminary inquiry, standard command investigation, or litigation-report investigation is required by the circumstances. If a litigation-report investigation is required, the MARFORRES, OSJA will assign a judge advocate to supervise the investigating officer.

## MARFORRES LEGAL SOP

<b>CLAIM FOR DAMAGE, INJURY, OR DEATH</b>		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet/s if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency:			2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and Zip Code)		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN	4. DATE OF BIRTH	5. MARITAL STATUS	6. DATE AND DAY OF ACCIDENT	7. TIME (A.M. OR P.M.)	
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.)					
9. <b>PROPERTY DAMAGE</b>					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code)					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.)					
10. <b>PERSONAL INJURY/WRONGFUL DEATH</b>					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT.					
11. <b>WITNESSES</b>					
NAME		ADDRESS (Number, street, city, State, and Zip Code)			
12. (See instructions on reverse)					
AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights.)		
			\$0.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.)			13b. Phone number of signatory	14. DATE OF CLAIM	
<b>CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM</b>  The claimant shall forfeit and pay to the United States the sum of \$2,000, plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)			<b>CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS</b>  Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)		

95-109

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Clear Form

STANDARD FORM 95 (Rev. 7-85)  
PRESCRIBED BY DEPT. OF JUSTICE  
28 CFR 14.2

Figure 7-1 -- Standard Form 95

# MARFORRES LEGAL SOP

PRIVACY ACT NOTICE	
<p>This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.</p> <p>A. <i>Authority:</i> The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 551, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.</p>	<p>B. <i>Principal Purpose:</i> The information requested is to be used in evaluating claims.</p> <p>C. <i>Routine Use:</i> See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.</p> <p>D. <i>Effect of Failure to Respond:</i> Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".</p>
INSTRUCTIONS	
<p>Complete all items - Insert the word <b>NONE</b> where applicable</p>	
<p>A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A <u>SUM CERTAIN</u> FOR INJURY TO OR LOSS OF</p>	<p>PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE REPRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN <b>TWO YEARS</b> AFTER THE CLAIM ACCRUES.</p>
<p>Any instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in item #1 on the reverse side. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplemental regulations also. If more than one agency is involved, please state each agency.</p>	<p>(b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.</p>
<p>The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.</p>	<p>(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.</p>
<p>If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in item 12 of this form.</p>	<p>(d) Failure to completely execute this form or to supply the requested material within two years from the date the allegations accrued may render your claim "invalid". A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.</p>
<p>The amount claimed should be substantiated by competent evidence as follows:</p> <p>(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.</p>	
<p><b>Failure to specify a sum certain will result in invalid presentation of your claim and may result in forfeiture of your rights.</b></p>	
<p>Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden,</p>	
<p>to</p> <p>Director, Tort Branch Civil Division U.S. Department of Justice Washington, DC 20530</p>	<p>and to the Office of Management and Budget Paperwork Reduction Project (1105-0008) Washington, DC 20503</p>
INSURANCE COVERAGE	
<p>In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.</p>	
<p>15. Do you carry accident insurance? <input type="checkbox"/> Yes, if yes, give name and address of insurance company (Number, street, city, State, and Zip Code) and policy number. <input type="checkbox"/> No</p>	
<p>16. Have you filed claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?</p>	<p>17. If deduction, state amount</p>
<p>18. If claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? <i>(It is necessary that you ascertain these facts)</i></p>	
<p>19. Do you carry public liability and property damage insurance? <input type="checkbox"/> Yes, if yes, give name and address of insurance carrier (Number, street, city, State, and Zip Code) <input type="checkbox"/> No</p>	

SF 95 (Rev. 7-85) BACK

Figure 7-1 -- Standard Form 95



MARFORRES LEGAL SOP

CHAPTER 8

LEGAL ASSISTANCE IN SUPPORT OF MOBILIZATION

	<u>PARAGRAPH</u>	<u>PAGE</u>
GENERAL. . . . .	8000	8-3
WILLS. . . . .	8001	8-4
ITEMS NOT COVERED BY WILLS . . . . .	8002	8-4
POWERS OF ATTORNEY . . . . .	8003	8-5
SERVICEMEMBERS' CIVIL RELIEF ACT . . . . .	8004	8-5
INDEBTNESS . . . . .	8005	8-7
FINANCIAL SUPPORT TO FAMILY MEMBERS. . . . .	8006	8-7
SERVICE OF PROCESS . . . . .	8007	8-7
REEMPLOYMENT RIGHTS. . . . .	8008	8-7
SURVIVOR BENEFITS. . . . .	8009	8-7
SERVICEMEN'S GROUP LIFE INSURANCE. . . . .	8010	8-7

FIGURES

	<u>PAGE</u>
8-1 PROPERTY INVENTORY AND PERSONAL AFFAIRS RECORD	8-9
8-2 SERVICEMEMBERS' CIVIL RELIEF ACT REQUEST	8-15

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# MARFORRES LEGAL SOP

## CHAPTER 8

### LEGAL ASSISTANCE IN SUPPORT OF MOBILIZATION

#### 8000. GENERAL

1. Legal Assistance. The Department of the Navy's legal assistance program provides free attorney assistance to servicemembers, their family members, and other eligible clients regarding personal legal matters. Paragraphs 0706, 0708 and 0711 of the JAGMAN list the various legal assistance services available to servicemembers and their family members. Reserve members on active duty for thirty (30) days or more and their family members are eligible for all available legal assistance services. Furthermore, Reserve members recalled to active duty under mobilization authority for more than thirty (30) days are entitled to legal assistance after their release from active duty for a period of time not less than twice the length of period served on active duty. Reserve members on active duty for less than thirty (30) days and their family members may be provided legal assistance in emergency cases.

2. Premobilization Legal Assistance. Legal assistance in support of premobilization improves our national combat readiness posture. To enhance readiness and ensure Reserve personnel are prepared to meet their active duty obligation when mobilized, premobilization legal assistance is authorized. Premobilization legal assistance can be provided to active and inactive Reserve personnel when it is consistent with readiness needs. Premobilization legal assistance consists of drafting and updating wills; drafting advance medical directives and powers of attorney; reviewing life insurance policies; and any other assistance that relates to the recall of Reserve members to active duty. Premobilization legal assistance services are not authorized for family members. However, once the Reserve member is activated family members are entitled to all available legal assistance services. See JAGMAN 0706. In preparation of mobilization, Reserve Marines should be encouraged to maintain a list of property and personal affairs similar to that contained in figure 8-1 of this SOP.

3. Premobilization Legal Assistance Support. The MARFORRES LSSS is responsible for providing premobilization legal assistance to all MARFORRES units. Reserve units that have a RJA located at the Reserve site will request premobilization legal assistance from the RJA. Reserve units that do not have a judge advocate

located at the Reserve site will contact the Deputy SJA of the unit's GCMCA, i.e., 4<sup>th</sup> MARDIV, 4<sup>th</sup> MAW, and 4<sup>th</sup> MLG who will arrange for premobilization legal assistance support.

#### 8001. WILLS

1. Mass will preparation and executions are discouraged. To minimize hasty will preparation and mass will executions, during mobilization, Reserve commanders should include legal assistance services in their annual training plan. Additionally, when a Reserve commander is notified that his or her unit may be mobilized, the Reserve commander should schedule legal assistance services well in advance of the proposed activation date. Advance planning will limit the number of last minute legal documents ensuring Reserve Marines are provided one-on-one legal assistance that meets their individual needs.

2. In most cases, Marines who have minor children or own real estate should have a will and the estate plan it provides. Additionally, servicemembers who already have a will should consult a legal assistance attorney to update their will when there are important events in their life such as marriage, divorce, birth or adoption of children, or acquisition of wealth. MARFORRES commanders can require members of their unit to attend estate-planning briefs and should provide them an opportunity to consult with a legal assistance attorney concerning their individual requirements for a current will. However, the decision whether or not to execute a will is an individual decision that must remain with the Marine.

#### 8002. ITEMS NOT COVERED BY WILLS

1. Insurance Policies. A declaration in a will does not affect the distribution of proceeds from life insurance policies. Life insurance policies pay proceeds to the beneficiaries named in the insurance contract even if the will contradicts the insurance policy. That being the case, Reserve members in preparation of mobilization should ensure that the named beneficiary or beneficiaries of their insurance policies and their SGLI contract are current and correct. Reserve members should also inspect all life insurance policies to ensure the policies do not contain "war clauses," which voids coverage during time of war or conflict.

2. Retirement Accounts. Similarly a declaration in a will does not affect the distribution of assets contained in Individual Retirement Accounts (IRA's) or Thrift Savings Plans (TSP's). IRA's and TSP's distribute assets to the beneficiaries named in the contract even if the will contradicts the IRA or TSP. That being the case, Reserve members in preparation of mobilization

should ensure that the named beneficiary or beneficiaries of their IRA's and TSP's are current and correct.

3. Joint Ownership. Generally, property held in joint ownership with one's spouse will automatically pass to the surviving spouse upon the death of the other. For example, jointly owned bank accounts, automobiles, stocks and bonds, and real estate transfer automatically from one spouse to the other upon the death of one joint property owner. However, each state's succession laws control the distribution of property held jointly and differences between community property states and non-community property states can be significant. Therefore, reliance on the automatic transfer of assets without a will is discouraged.

#### 8003. POWERS OF ATTORNEY (POA)

1. A POA is a written instrument executed by one person, the principal or grantor, who designates another individual, the agent or "attorney-in-fact" to perform specified acts on the principal's behalf. A POA informs third parties of the authority of the agent. However, there is no requirement for third parties to recognize the authority of the agent to act on the principal's behalf as set forth in the POA. POA's are usually designated as either "special" or "general" depending on the specified act(s) or kind(s) of act(s) for which one has been given authority to act on behalf of the principal. A special POA authorizes another individual to act only for a specifically stated act or purpose. A general POA authorizes the agent to perform all acts on behalf of the principal. Because general powers of attorney lack specificity required for many important transactions such as purchasing or selling real estate, general powers of attorney may be rejected or rendered ineffective when needed most.

2. Prior to mobilization, Reserve Marines should consider providing a POA to a trusted spouse or family member in the event legal transactions require attention while the Reserve member is deployed. The purposes of granting a POA may include selling real estate, selling an automobile, filing tax returns, paying bills, terminating a lease, etc. Because the authority granted to the agent is subject to abuse, Reserve Marines should be given an opportunity to consult a Legal Assistance Attorney for the preparation of a power of attorney.

8004. SERVICEMEMBERS' CIVIL RELIEF ACT (SCRA). The SCRA affords protection and relief to Reservists who are mobilized. The protection and relief begin when a Reservist receives orders to report for extended active duty and end a short time after release from active duty. The relief is not automatic; a servicemember must "trigger" the SCRA by petitioning for relief. Figure 8-2 of this SOP provides a sample request.

1. Repossession of Property. The SCRA prevents creditors from repossessing the property of an activated Reservist unless the creditor brings a lawsuit and the court finds that the Reservist's failure to pay was not "materially affected" by his being in the service. The court can either postpone the due date of the obligation or set up a payment schedule that the Reservist can meet.

2. Lease. An activated Reservist, or dependent, who is leasing a house or apartment may lawfully cancel the lease under the Act by providing written notice to vacate the premises effective thirty (30) days after the next rental payment is due, or the last day of the month following the month in which written notice is delivered to the landlord.

3. Interest Rate. The SCRA protects Reserve members recalled to active duty by automatically reducing interest on loans to an annual interest rate of six (6) percent while the Reservist is on active duty. Note however, the six (6) percent ceiling does not apply to new debts the Reservist incurs while on active duty. A creditor can avoid this reduction only by bringing a lawsuit and convincing the court that payment of the agreed higher interest rate is not "materially affected" by the member's entry on active duty.

4. Lawsuit. If a Reservist is sued after activation, the court should be notified of the Marine's status. If the Marine's military duty requirements "materially" affect his or her ability to appear at a judicial or administrative hearing, the Marine is entitled to an automatic ninety (90) day stay, that is, delay, of the proceedings. If the Marine makes such a request, the court must grant one automatic ninety (90) day stay. The Marine's request for a stay may be either a letter from the Marine stating how the Marine's current military duties materially affect his or her ability to appear and stating a date when the Marine can appear or a letter from the Marine's commanding officer stating how the Marine's current military duties prevent appearance and that military leave is not authorized for the Marine at the time of the letter. If the Marine requests a second stay (after the automatic ninety (90) day initial stay) and the court denies that stay, the court must appoint an attorney to defend the Marine's interests in court or in the proceeding.

5. State Income Tax. The military pay of a Reservist is subject to state income tax only in the state of the Reservist's "domicile," regardless of where he or she is actually stationed. The same is true of motor vehicle tax, if any. Nevertheless, the SCRA does not change state tax liability regarding taxes on real property or income tax on earnings from sources other than military pay.

8005. INDEBTEDNESS

1. Marines are expected to pay their just financial obligations; nevertheless, the Marine Corps has no legal authority to require a Marine to pay a private debt. However, court orders for spousal and/or child support will be acted upon in accordance with paragraph 8006 below.

2. Generally, creditors are prohibited from contacting a Marine's commanding officer about a Marine's debt, unless the debt is reduced to judgment or the Marine has given specific written permission to the creditor. See section 16002 of MCO P5800.16\_. However, some creditors are authorized by law to obtain garnishment orders against a Marine's military pay. If a MARFORRES command receives a garnishment order, the commanding officer should contact the MARFORRES SJA for guidance.

3. For more detailed discussion of issues related to indebtedness see Chapter 16, LEGADMINMAN.

8006. FINANCIAL SUPPORT TO FAMILY MEMBERS. The Marine Corps will not serve as a haven for personnel who fail to provide adequate and continuous support to their family members. Marines are expected to fully comply with the provisions of separation agreements and court orders addressing the support of family members. Chapter 15 of the LEGADMINMAN establishes the Marine Corps policy regarding the servicemember's requirement to provide financial support to family members, sets forth punitive provisions for failure to provide support, provides standards for interim financial support in absence of a court order or separation agreement, and directs the form and timing of financial support payments. When a MARFORRES commander receives a complaint alleging inadequate or nonsupport by a Marine of his or her command, the commander should refer to Chapter 15 of the LEGADMINMAN for guidance.

8007. SERVICE OF PROCESS. See Chapter 10 of this SOP.

8008. RESERVE REEMPLOYMENT RIGHTS. See Chapter 11 of this SOP.

8009. SURVIVOR BENEFITS. Family members who survive a Reservist who dies while on active duty will receive benefits as set forth in Chapter 6, Section 2 of MCO P3040.4\_ (Marine Corps Casualty Procedures Manual). For further information on survivor benefits, call the Marine Corps Casualty Assistance Branch, CMC (MRC) at 1-800-847-1597.

8010. SERVICEMEN'S GROUP LIFE INSURANCE (SGLI). SGLI is normally elected in the amount of \$250,000. However, servicemembers can elect a lesser coverage and pay a lower

premium. SGLI coverage is provided automatically to members of the Selected Marine Corps Reserve with the premium deducted from their Reserve pay. In the event of death of a Reservist, the next of kin or estate executor may apply for payment of the SGLI benefits. Marine Corps Order P1741.8\_ (Government Life Insurance Manual), outlines the procedures the next of kin or executor should follow to effect payment to the beneficiaries. The Government Life Insurance Manual also contains information and guidance pertaining to life insurance coverage under the Family Servicemembers' Group Life Insurance (FSGLI) program. The Marine elects FSGLI spousal coverage up to the maximum of \$100,000. Child coverage is provided at no cost as long as the Marine is insured under the SGLI program.



MARFORRES LEGAL SOP

PROPERTY INVENTORY AND PERSONAL AFFAIRS RECORD

(FIRST)	(MIDDLE)	(LAST NAME)	(RANK)
---------	----------	-------------	--------

  

(ORGANIZATION)	(SOCIAL SECURITY NUMBER)
----------------	--------------------------

Permanent or legal address: \_\_\_\_\_  
(No. and street)

  

(TOWN)	(COUNTY)	(STATE)
--------	----------	---------

Present Residence: \_\_\_\_\_  
(No. and Street)

  

(TOWN)	(COUNTY)	(STATE)
--------	----------	---------

  

I. PERSONAL DATA

1. Place of Birth: \_\_\_\_\_

  

(TOWN)	(COUNTY)	(STATE)	(MONTH, DAY, YEAR)
--------	----------	---------	--------------------

2. Naturalization (if applicable): \_\_\_\_\_  
(MONTH, DAY, YEAR)

by \_\_\_\_\_  
(Designation and location of court granting naturalization)

3. Parents:

Father: \_\_\_\_\_  
(FIRST) (MIDDLE) (LAST NAME)

Mother: \_\_\_\_\_  
(FIRST) (MIDDLE) (LAST NAME)

4. Marriage: to whom: \_\_\_\_\_  
(FIRST) (MIDDLE) (LAST NAME)

place and date: \_\_\_\_\_  
(TOWN) (COUNTY) (STATE) (MONTH, DAY, YEAR)

Figure 8-1 -- Property Inventory and Personal Affairs Record

## MARFORRES LEGAL SOP

### II. LOCATION OF FAMILY RECORDS

1. Birth certificate or other proof of date and place of birth of service member and each member of immediate family; originals or certified copies are located where? (Required by insurance companies and Social Security Administration.) \_\_\_\_\_

---

2. Naturalization papers of service member, spouse, children, if not born in United States.

3. Marriage certificate (original or certified copy).  
(Necessary in order to establish claims for certain payments and benefits, including VA and Social Security benefits, and in connection with the Will.)

4. Divorce papers (or certified copies) or death certificates of previous spouse.

5. Adoption papers (if applicable).

Note: if an adoption is in process see your lawyer.

### III. MILITARY SERVICE PERSONAL FILE LOCATION (DISCHARGE PAPERS, ORDERS, ETS.)

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### IV. OTHER IMPORTANT PAPERS

1. Will:

a. I have not executed a Will \_\_\_\_\_

b. I have executed a will dated \_\_\_\_\_. It is located at \_\_\_\_\_

2. Power of Attorney:

a. I have not executed a Power of Attorney

b. I have executed a (General) (Special) Power of Attorney  
date \_\_\_\_\_ naming \_\_\_\_\_  
(Agent or attorney in fact)

\_\_\_\_\_  
(Address)

Figure 8-1 -- Property Inventory and Personal Affairs Record

MARFORRES LEGAL SOP

c. It has/has not been recorded in \_\_\_\_\_  
County, \_\_\_\_\_ Clerk's office.  
(State)

3. Income Tax:

a. Copies of my Federal income tax returns and related papers for last 3 years are located at \_\_\_\_\_.

b. Copies of \_\_\_\_\_ State income tax returns and related papers are located at \_\_\_\_\_.

V. INSURANCE

1. My life is insured as follows:

Insurance Company	Policy No.	Amount	Payment date
Policies are located at _____			
Policy No. _____			
Payment date _____			

VI. SOCIAL SECURITY

1. Social Security Number \_\_\_\_\_

2. Dependents' Social Security number(s):

Name: _____	Number: _____
Name: _____	Number: _____
Name: _____	Number: _____

3. Location of current civilian employment record:

VII. PROPERTY OWNERSHIP OR INTEREST THEREIN. Add as many other entries as may be required to complete the record for each piece of real estate in which you have an interest.

MARFORRES LEGAL SOP

Consider use of special power of attorney and keep a current mailing address with county assessor.

1. Real estate consisting of \_\_\_\_\_  
(Description of Property)  
located at \_\_\_\_\_  
\_\_\_\_\_  
(Address or Deed Description)

The property is encumbered by a \_\_\_\_\_  
(Mortgage, Trust, Deed, etc.)  
held by \_\_\_\_\_  
(Name) (Address)

Taxes on the property are payable through \_\_\_\_\_  
(County Assessor) at \_\_\_\_\_

\_\_\_\_\_  
(Address)

Next tax due date is \_\_\_\_\_ for approximately \$ \_\_\_\_\_

2. Automobile: \_\_\_\_\_  
(Make, Model, Year) (State in which licensed)

Automobile is insured with \_\_\_\_\_  
(Company)

Insurance policy number \_\_\_\_\_

Premiums paid to \_\_\_\_\_  
(Address)

(Ask agent about possible premium reductions.)

Automobile papers are located at:

Bill of Sale, Title: \_\_\_\_\_

Loan Documents: \_\_\_\_\_

Insurance Documents: \_\_\_\_\_

Registration: \_\_\_\_\_

MARFORRES LEGAL SOP

3. Personal property: List locations of pertinent papers relating to other large or expensive items of personal property such as a boat, machinery, livestock, goods in storage, jewelry, cameras, etc.

VIII. BANK ACCOUNTS

Type of account \_\_\_\_\_

Account number \_\_\_\_\_

Location and name of bank \_\_\_\_\_

Type of account \_\_\_\_\_

Account number \_\_\_\_\_

Location and name of bank \_\_\_\_\_

IX. SAFE DEPOSIT BOX

1. Name of bank or trust company and address \_\_\_\_\_

2. Location of safe deposit box key \_\_\_\_\_

X. UNITED STATES SAVINGS BONDS. Located at \_\_\_\_\_

1. Person designated as beneficiary or joint owner \_\_\_\_\_

2. List of savings bonds by denomination, serial number, and location. (Necessary if lost bonds are to be replaced.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MARFORRES LEGAL SOP

XI. STOCKS, BONDS, AND SECURITIES OWNED. Located at \_\_\_\_\_

---

Name, address, and phone number of stockbroker or financial advisors \_\_\_\_\_

XII. PERSONAL ATTORNEY

Name	Address	Phone #
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XIII. DESIGNATED BENEFICIARY OF MILITARY PAY AND ALLOWANCES

Name(s) and address(es) of person or persons designated on my official Record of Emergency Data form to receive settlement of unpaid pay and allowances in the event of my death.

XIV. DESIGNATED BENEFICIARY/BENEFICIARIES OF SGLI

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XV. ENTER ANY ADDITIONAL DATA REGARDING INSURANCE, ALLOTMENTS, MILITARY RECORDS, INSTRUCTIONS TO DEPENDENTS, VA CLAIM NUMBER, ANY FORMER SERVICE OR SERIAL NUMBER, ETC.

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(Use an extra sheet of paper, if needed.)

MARFORRES LEGAL SOP

Clerk of the Court  
(court's address)

RE: Civil Action No. \_\_\_\_\_  
\_\_\_\_\_ V. \_\_\_\_\_

Dear (Sir) (Madam):

I am the (defendant) (respondent) in the above-titled case,  
now scheduled for (a hearing/trial/etc. on \_\_\_\_\_,  
20\_\_\_\_. I am now on active military duty with the United  
States \_\_\_\_\_, and currently assigned to

\_\_\_\_\_  
(Unit and Location)

My military service will materially affect my ability to appear  
and defend the matter on that date for the following reasons:

(I will not be permitted leave at that time because of a  
scheduled unit inspection/field exercise/temporary duty/etc. at  
\_\_\_\_\_ on \_\_\_\_\_.)

(I will not be able to return to in sufficient time to obtain  
legal counsel to assist me in defending the action due to  
\_\_\_\_\_.)

I request a stay of this action under the Servicemembers' Civil  
Relief Act, 50 U.S.C., App. § 521, until \_\_\_\_\_ 20\_\_\_\_.

Please notify me when my request has been granted.

I certify that I have mailed a copy of this letter to opposing  
counsel on this date. I will keep the court advised of any  
changes in my status or obligations, which will permit an earlier  
resolution of this matter.

Sincerely,

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed name)

\_\_\_\_\_  
(Grade and Position)

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MARFORRES LEGAL SOP

CHAPTER 9

STANDARDS OF CONDUCT

	<u>PARAGRAPH</u>	<u>PAGE</u>
JOINT ETHICS REGULATION . . . . .	9000	9-3
MARFORRES ETHICS COUNSELORS . . . . .	9001	9-3
BASIC OBLIGATIONS OF PUBLIC SERVICE . . . .	9002	9-3
DEFINITIONS . . . . .	9003	9-5
ACCEPTANCE OF GIFTS . . . . .	9004	9-6
GIFTS BETWEEN GOVERNMENT EMPLOYEES . . . .	9005	9-8
CONFLICTING FINANCIAL INTERESTS. . . . .	9006	9-9
GOVERNMENT TRAVEL . . . . .	9007	9-10
USE OF GOVERNMENT RESOURCES . . . . .	9008	9-11
MISUSE OF POSITION . . . . .	9009	9-12
FUNDRAISING . . . . .	9010	9-12
LOGISTICAL AND SPEAKER SUPPORT OF NON-FEDERAL ENTITIES . . . . .	9011	9-12
SEEKING OUTSIDE EMPLOYMENT . . . . .	9012	9-13

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## MARFORRES LEGAL SOP

### CHAPTER 9

#### STANDARDS OF CONDUCT

9000. JOINT ETHICS REGULATION (JER). The JER, Department of Defense Directive 5500.7-R, is the single source for standards of ethical conduct and ethics guidance for the Department of Defense. The JER includes direction in the areas of financial disclosure, post-government employment rules, enforcement, and training. The JER is founded on the Standards of Ethical Conduct for the Executive branch located at 5 CFR section 2635.

1. Policy. The Standards of Conduct and the JER are designed to foster public confidence in the Federal Government by promoting the integrity of all Federal employees. It is especially crucial that MARFORRES commands strictly comply with the JER, since they are in the spotlight due to their constant interaction with the local community. Any violation or appearance of a violation by a MARFORRES unit can tarnish the image of the Marine Corps and the Marine Corps Reserve.

2. Application. The JER is a lawful general order, therefore noncompliance may be charged as a violation of Article 92, UCMJ. The JER applies to all DoD employees. Accordingly, within MARFORRES the JER applies to civilian officers and employees, active duty Regular and Reserve military officers, active duty enlisted members, and Reserve members on active duty.

#### 9001. MARFORRES ETHICS COUNSELORS

1. SJA and Counsel. The SJA MARFORRES and Counsel MARFORRES are designated ethics counselors for all commands and personnel assigned to MARFORRES.

2. Responsibilities. In their capacity as ethics counselors, the SJA and Counsel make factual determinations and render decisions on matters covered by the JER. Government employees who request an ethics opinion from an ethics counselor are generally protected from adverse action regarding the matter provided they correctly describe all the facts and circumstances and they follow the advice given. Ethics advice from anyone other than a designated ethics counselor is only guidance and will not protect Government employees from adverse action.

#### 9002. BASIC OBLIGATIONS OF PUBLIC SERVICE

1. Public service is a public trust, requiring employees to place

loyalty to the Constitution, the laws, and ethical principles above private gain.

2. Employees shall not hold financial interests that conflict with the conscientious performance of duty.
3. Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
4. Employees shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
5. Employees shall put forth honest effort in the performance of their duties.
6. Employees shall not knowingly make unauthorized commitments or promises of any kind, with the purpose to bind the Government.
7. Employees shall not use public office for private gain.
8. Employees shall act impartially and not give preferential treatment to any private organization or individual.
9. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
10. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, when it conflicts with their official Government duties and responsibilities.
11. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
12. Employees shall satisfy in good faith their obligation as citizens, including all just financial obligations, especially those - such as Federal, State, or local taxes - that are imposed by law.
13. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
14. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the standards of conduct.

9003. DEFINITIONS

1. Gift. A gift is defined by the JER as any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term gift also includes services such as training, transportation, local travel, lodging, and meals. See paragraph 9004.2 below for a list of items that are not gifts although they have some value.

2. Prohibited Source. Prohibited source means any person or entity that:

- a. Is seeking official action by the employee's agency;
- b. Does or seeks to do business with the employee's agency;
- c. Is regulated by the employee's agency;
- d. Has interests that may be substantially affected by the employee's official duties; or
- e. Is an organization a majority of whose members fit into one or more of the above categories.

3. Indirect Gifts. Indirect gifts include gifts given with the employee's knowledge and acquiescence to his or her parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee. Indirect gifts also include gifts given to any other person, including a charity, on the basis of designation, recommendation, or other specification by the employee.

4. Official Position. A servicemember's official position includes his or her status, authority, title, duties, or job description associated with his or her Federal employment.

5. Official Superior. An official superior is any other employee, including an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee. Official superior also encompasses any other official superior of the employee.

6. Perishable. Items that will spoil if not consumed or used immediately, such as donuts or flowers. Non-perishable items include unopened bottled drinks and other packaged or sealed items.

9004. ACCEPTANCE OF GIFTS

1. General Rules. A Government employee shall not solicit or accept, directly or indirectly, a gift or other item of monetary value:

- a. From a prohibited source (see paragraph 9003.2), or
- b. Given because of the employee's official position.

2. Items Not Considered Gifts. The following items have monetary value, but are not considered gifts:

- a. Coffee, donuts, and other similar modest items of food and refreshments when offered other than as part of a meal;
- b. Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies which are intended solely for presentation;
- c. Rewards and prizes in contests open to the public. This does not include contests the employee enters as part of his or her official duties;
- d. Commercial discounts available to the general public or to all Government or military personnel;
- e. Loans from banks and other financial institutions on terms generally available to the public;
- f. Anything paid for by the Government or secured by the Government under a Government contract; and
- g. Anything for which the employee pays full market value.

3. Gifts that Maybe Accepted. The following items are gifts, but may be accepted from prohibited sources or if given because of the Government employee's official position provided the employee does not solicit them.

- a. Gifts of \$20.00 or less. A Government employee may accept an unsolicited gift with a market value of \$20.00 or less per source, per occasion, as long as the total value of all gifts received from a single source during the year does not exceed \$50.00. This exception does not apply to gifts of cash, negotiable instruments, or investment items such as bonds or stock. A Government employee cannot accept two gifts on the same occasion, from the same source, if the aggregate of both gifts exceeds \$20.00.

b. Gifts Based on a Personal Relationship. A Government employee may accept a gift that is given based on a personal relationship, such as a family relationship or personal friendship rather than the official position of the employee. In general, personal relationships must precede the professional relationship.

c. Discounts and Similar Benefits. Government employees may accept reduced membership rates or other reduction of fees offered to all Government employees or all military personnel by professional organizations. They may also accept other opportunities and benefits offered to members of a group or class in which membership is unrelated to the Government employment of the person receiving the benefit.

d. Awards and Honorary Degrees. Government employees may accept gifts that are a bona fide award or incident to a bona fide award in recognition for meritorious public service. However, the person or organization giving the gift must not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Additionally, cash and gifts in excess of \$200.00 require a written determination from an ethics counselor.

e. Gifts Based on Outside Business or Employment. A Government employee may accept meals, lodging, transportation, and other benefits:

(1) Resulting from the business activities of the spouse when it is clear that the benefits have not been offered or enhanced because of the Government employees official position;

(2) Resulting from the Government employee's outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of the employee's Government status; or

(3) That are customarily provided by a prospective employer in connection with bona fide employment discussion.

f. Widely Attended Gatherings and Other Events

(1) Speaking and Similar Engagements. A Government employee assigned in his official capacity to participate as a speaker, panel member, or to otherwise provide information on behalf of the agency at an event may accept free attendance at the event from the sponsor on the day of his presentation.

(2) Widely Attended Gatherings. A Government employee may accept free attendance from the sponsor of a widely attended

gathering if the agency determines that the employee's attendance is in the interest of the agency because it will further agency programs or operations. Free attendance may be accepted from other than the sponsor of a widely attended gathering if more than 100 people will be in attendance and the cost is \$260.00 or less.

(3) Free attendance may include a waiver of all or part of a conference fee, the provision of food, refreshments, entertainment, instruction, and material furnished to all attendees as an integral part of the event. However, free attendance does not include travel or lodging expenses.

g. Social Invitations from Other Than Prohibited Sources. Government employees may accept food, refreshments, and entertainment at a social event attended by several persons when the invitation is from a person who is not a prohibited source and when no one in attendance is charged a fee to attend the event. This exception does not apply to a gift of travel or lodging necessary to attend the event.

4. Proper Disposition of Prohibited Gifts. If a servicemember receives a non-perishable gift in violation of the JER, the servicemember must return the gift to the source or pay the donor its fair market value. If the gift is perishable, the servicemember may donate the gift to charity, share the gift with those in his or her office space, or destroy it. The servicemember may not attempt to correct the problem by reciprocating or paying the excess in value above \$20.00 to the provider of the gift.

#### 9005. GIFTS BETWEEN GOVERNMENT EMPLOYEES

1. General Principle. A Government employee shall not directly or indirectly give a gift or make a donation toward a gift for an official superior or solicit a contribution from another employee for a gift for an official superior of either employee. Furthermore, a Government employee shall not accept a gift from a lower-paid employee, unless the donor and recipient are personal friends who are not in an official superior-subordinate relationship.

#### 2. Exceptions

a. Unsolicited gifts may be given on an occasional basis including traditional gift-giving occasions such as birthdays and holidays. This exception includes:

(1) Items with an aggregate value of \$10.00 or less per occasion;



(2) Items such as food and refreshments that will be consumed at the office;

(3) Personal hospitality at someone's home (must be of a type and value customarily provided to personal friends, e.g., dinner); and

(4) Items in connection with the receipt of personal hospitality (must be of a type and value customarily provided to personal friends, e.g., bottle of reasonably price wine).

b. Special, Infrequent Occasions. A Government employee may give a gift or donate toward a gift to an official superior and the superior may accept the gift provided the gift is given for a special infrequent occasion and the gift is appropriate for the occasion. Special infrequent occasions include infrequent events of personal significance such as marriage, illness, or birth or adoption of a child and occasions that terminate the senior subordinate relationship such as transfer, resignation, retirement, or change of command.

(1) Under this exception, the value of the gift may exceed \$10.00 provided it is appropriate for the occasion.

(2) Group gifts on special infrequent occasions are generally limited to \$300.00 per donating group. A donating group is comprised of all contributors to that group gift. If one employee contributes to two or more donating groups, then the value of the gifts from groups with a common contributor are aggregated for purposes of the \$300.00 limit. A gift that terminates the official superior-subordinate relationship may exceed \$300.00 per donating group if the gift is appropriate to the occasion and is uniquely linked to the departing employee's position or tour of duty and commemorates the same.

(3) Solicitations for gifts to an official superior may not exceed \$10.00. Nevertheless, employees are free to voluntarily give more than \$10.00.

#### 9006. CONFLICTING FINANCIAL INTERESTS

1. General Principle. Government employees may not take official action in matters in which they have a personal interest or matters that may affect an interest that is imputed to them.

a. 18 U.S.C. § 208. Title 18, U.S. Code, section 208 is a criminal statute that prohibits Government employees from participating personally and substantially in an official capacity in any particular matter in which the Government employee has a financial interest, if the particular matter will

have a direct and predictable effect on that interest. A Government employee's financial interest also includes financial interests that are imputed to the Government employee. See below.

b. Imputed Interests. The interests of a spouse, child, general partner, organization in which the employee serves, or anyone with whom the employee is seeking or negotiating future employment, are imputed to the employee.

2. Resolving Conflict of Interests. When a Government employee's official position creates a conflict of interest, the conflict of interest may be resolved through disqualifying the Government employee from participating in the matter, reassigning or changing the duties of the Government employee, requiring the Government employee to divest his or her financial interests, or requesting a waiver on behalf of the Government employee..

#### 9007. GOVERNMENT TRAVEL

1. Frequent Flyer Miles and Other Travel Benefits. This rule changed in 2001. Government employees who accrue promotional benefits such as frequent flyer miles on official travel may keep them for their own personal use or for use on official travel to upgrade to business class or first-class.

2. Upgrades on Official Travel. A Government employee may accept an upgrade to business class or first-class on official travel if the upgrade is an on-the-spot upgrade that is generally available to the public; the upgrade results from a promotional offer that is realistically available to the general public or all Federal employees or military members; or the upgrade is offered to anyone who accumulates enough frequent flyer miles to belong to a club or group, even if some miles are from official travel. However, upgrades that are given to a Government employee based on the employee's grade or position cannot be accepted.

3. First-Class Travel. Normally Government employees do not travel first-class at Government expense. However, first-class travel may be authorized if the regularly scheduled flight provides only first-class accommodations, other accommodations are not reasonably available, the Government employee has a physical disability that is substantiated in writing by medical authority, or exceptional security circumstances require first-class travel.

#### 4. Voluntary/Involuntary Bumps

a. Voluntary Bump. Government employees that are

voluntarily bumped from a flight may keep any promotional benefits given to them. Caveat, Government employees may only voluntarily surrender their seat if doing so does not adversely affect the performance of their official duties and does not result in additional cost to the Government. The Government employee must absorb any additional expenses caused by the voluntary bump. Furthermore, if the Government employee is required to file a financial disclosure report, OGE Form 450, he or she must include any compensation over \$285.00 on that report.

b. Involuntary Bump. If a Government employee is involuntarily bumped while on official travel and the carrier offers the employee compensation such as a travel voucher, hotel accommodations, or meal coupons, then the compensation belongs to the Government and must be turned in or deducted from the employee's travel claim.

#### 9008. USE OF GOVERNMENT RESOURCES

1. General Principle. Government employees must protect and conserve Government property and may not use Government property or allow its use for private or personal purposes. Government employees must also use official time in an honest effort to perform official duties.

#### 2. Exceptions

a. Authorized Use. Supervisors may permit the personal use of Government resources when the use does not adversely impact the performance of the employees official duties, is of reasonable duration and frequency, is during personal time rather than official time, serves a legitimate public interest, does not reflect adversely on DoD or the command, and does not create a significant additional cost to DoD or the command.

#### b. Examples

(1) Use of Government telephone to call home on the condition there are no long distance charges to the Government;

(2) Use of Government computer, internet, and E-mail systems for personal use; or

(3) Use of Government copiers.

3. Government Vehicles. Under no circumstances will Government owned or leased vehicles be used for personal use. Furthermore, Government vehicles will not be used to transport Government employees between their home and work unless one of the

exceptions listed in 31 U.S.C. § 1344 is satisfied and the matter is referred to one of the MARFORRES Ethics Counselors for a legal opinion.

9009. MISUSE OF POSITION. DoD employees shall not use their public office, billet, position, or rank for their private gain. Additionally, DoD employees may not permit the use of their government title, position, or any authority associated with their office to induce or coerce another person to provide any benefit to the Government employee or anyone whom with the Government employee is affiliated. Furthermore, DoD employees may not permit the use of their government title, position, or any authority associated with their office to imply that DoD or the Government endorses their personal activities; or to endorse any product, service, or enterprise except as permitted by statute or regulation.

#### 9010. FUNDRAISING

1. General Principle. Government employees may raise funds for organizations in their personal capacity, but they may not use their official title, position, or authority to raise funds unless the organization meets one of the exceptions below. Additionally, unless the organization meets one of the exceptions below, fundraising on Government property is prohibited.

2. Exceptions. DoD officials may officially endorse and support fundraising efforts and permit fundraising on Government property for the Combined Federal Campaign, Navy-Marine Corps Relief Society, and any organization composed primarily of DoD personnel or their family members when fundraising among their own members, for the benefit of their own members or their family members, provided the fundraising efforts are approved by the head of the DoD component command or organization.

3. Other Charities. DoD employees may engage in other types of fundraising so long as it is done on off-duty hours; is not officially endorsed by any one in the command; and the Government employee raising funds does not personally solicit funds from subordinates or prohibited sources.

4. Further guidance regarding official and unofficial fundraising issues may be obtained from the MARFORRES Civil Law Officer.

#### 9011. LOGISTICAL AND SPEAKER SUPPORT OF NON-FEDERAL ENTITIES

1. The JER permits MARFORRES commands to render logistical support and speakers to events sponsored by non-Federal entities if the support:

- a. Does not interfere with official duties and does not detract from readiness;
- b. DoD community relations with the immediate community or other legitimate DoD public affairs or military interests are served by the support;
- c. It is appropriate to associate DoD, including the U.S. Marine Corps or the Marine Corps Reserve, with the event;
- d. The event is of interest and benefit to the local civilian community, the U.S. Marine Corps or Marine Corps Reserve, or any other part of DoD;
- e. The MARFORRES unit providing the support is able and willing to provide the same level of support to comparable events sponsored by similar non-Federal entities;
- f. Admission fee does not exceed the cost of the event, no fee is charged for the portion of the event sponsored by DoD, or DoD support is incidental to the event; and
- g. Support does not violate any other statute or regulation.

2. Logistical Support. Logistical support includes the use of DoD facilities and equipment, but does not include the use of DoD personnel other than necessary to make proper use of the equipment provided.

3. Air Shows. Involvement of DoD resources in air shows sponsored by non-Federal entities is approved or disapproved by the Office of the Assistance Secretary of Defense (Public Affairs).

## 9012. OUTSIDE EMPLOYMENT

1. Seeking Employment. Government employees, seeking employment from a non-Federal employer, are prohibited from doing Government work on any particular matter that will affect the financial interests of the prospective employer.

2. Post-Government Employment. Government employees who are either separating or retiring from active duty or Government service and are seeking future employment with an employer who is a prohibited source must contact the MARFORRES, Civil Law Officer for advice regarding post-Government employment. See paragraph 9003.2 for a definition of prohibited sources.

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MARFORRES LEGAL SOP

CHAPTER 10

CIVIL LAW

	<u>PARAGRAPH</u>	<u>PAGE</u>
GENERAL . . . . .	10000	10-3
MILITARY ASSISTANCE TO CIVIL AUTHORITIES .	10001	10-3
DELIVERY OF PERSONNEL . . . . .	10002	10-3
SERVICE OF PROCESS AND SUBPOENA . . . . .	10003	10-4
RELEASE OF OFFICIAL INFORMATION AND TESTIMONY FOR LITIGATION . . . . .	10004	10-6
JURY DUTY . . . . .	10005	10-7
REPRESENTATION BY DEPARTMENT OF JUSTICE . .	10006	10-7
FREEDOM OF INFORMATION ACT (FOIA) REQUEST .	10007	10-8
PRIVACY ACT (PA) REQUEST . . . . .	10008	10-8
BARRANT LETTERS . . . . .	10009	10-9
RENTAL VEHICLE DAMAGE . . . . .	10010	10-9

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## MARFORRES LEGAL SOP

### CHAPTER 10

#### CIVIL LAW

10000. GENERAL. This chapter addresses military assistance to civil authorities, delivery of personnel to civil authorities, responding to service of process, release of Government information, jury duty, tort liability, barment letters, and damage to rental vehicles.

10001. MILITARY ASSISTANCE TO CIVIL AUTHORITIES. Force Order 3440.2 sets out the MARFORRES policy, planning guidance, and assignment of responsibilities regarding requests from civil authorities for military assistance following civil disasters and emergencies. Because Federal law and regulations limit when, where, and how much support may be provided to civil authorities, COs and I-I's must become familiar with the MARFORRES policy and planning guidance prior to responding to any civil emergency or disaster.

#### 10002. DELIVERY OF PERSONNEL

##### 1. Delivery of Personnel to State Civil Authorities

a. Warrant for Active Duty Military Personnel Located Within the Territorial Limits of the Requesting State. When the delivery of any servicemember is requested by local civil authorities and the servicemember is located within the territorial limits of the requesting state, MARFORRES commanders are authorized to and normally will release the requested individual provided:

(1) The requesting state official has presented proper credentials and a valid "in-state" warrant;

(2) The Governor or other duly authorized officer of the state executes and delivers a written agreement providing for the return of the servicemember, at no expense to the United States or the servicemember, after civilian proceedings have been completed. See JAGMAN Para. 0607 and A-6-b; and

(3) The MARFORRES Civil Law Officer has been consulted prior to relinquishing control of the individual requested.

b. Delivery of Personnel Beyond Territorial Limits of the Requesting State. A request for the delivery of a servicemember

from law enforcement personnel from a state other than the one in which the servicemember is located shall be referred to the MARFORRES, Civil Law Officer for advice.

2. Delivery of Personnel to Federal Civil Authorities. When Federal law enforcement authorities (Federal Bureau of Investigations; Bureau of Alcohol, Tobacco, Firearms, and Explosives; Drug Enforcement Administration; etc.) display proper credentials and a valid Federal warrant for the arrest of a servicemember, commanders are authorized to and should permit the arrest of the individual sought. Commanders can prevent the arrest provided refusal is authorized by paragraph 0610 of the JAGMAN. However, prior to refusing to release a servicemember, the command must contact the MARFORRES Civil Law Officer for guidance.

3. Delivery of Personnel to Foreign Authorities. MARFORRES commanders will not release servicemembers to foreign authorities without first contacting MARFORRES Civil Law Officer for advice.

4. Delivery of Personnel Refused

a. Disciplinary Proceeding Pending. When the individual whose delivery is requested is pending disciplinary action for military offenses, the MARFORRES Civil Law Officer will be consulted to determine whether delivery of the accused should be granted or refused.

b. Delivery When the Accused is Serving a Sentence of a Court-Martial. When the individual is serving a sentence awarded by a court-martial, the requesting official should be referred to the MARFORRES Civil Law Officer.

#### 10003. SERVICE OF PROCESS AND SUBPOENA

1. Service of Process. Chapter 6, Part B of the JAG Manual deals with service of process and subpoenas on personnel. Service of process establishes a court's jurisdiction over a person by the proper delivery of a court order to that person advising him of the subject of the litigation and ordering him to appear or answer the plaintiff's allegations within a specified period of time or else be in default. Properly served, the process makes the person subject to the jurisdiction of a civil court.

a. Personnel Within the Jurisdiction of the Court. Except in unusual cases, MARFORRES commanders will permit the service of process when a member of their command is located within the jurisdiction of the state requesting service. Only in the unusual circumstance where compliance would seriously prejudice

the public interest will service of process be denied. Where practicable, the commander will require that the process be served in his presence or in the presence of an officer designated by him. Nevertheless, MARFORRES commanders shall not act as agents for the court. The civil process server must perform the actual delivery of the court documents.

b. Personnel Beyond the Jurisdiction of the Court

(1) Where personnel are beyond the jurisdiction of the court issuing the process, the commander will permit service under the same conditions in paragraph 10003.1 of this SOP for whatever legal affect it may have. The commander will advise the person to be served that acceptance of process is not compulsory and he or she should seek legal counsel. Servicemembers who indicate they will not accept service will not be ordered in a face-to-face meeting with the process server.

(2) Where process is forwarded to a commander with the request that it be delivered to a person within the command, he may deliver it to the person named therein, provided such person voluntarily agrees to accept it. The servicemember should be advised that he does not have to accept service of process, but may do so voluntarily. When the person named in the process does not voluntarily accept the process, it should be returned with a notation that acceptance is refused.

c. Service of Process Arising from Official Duties. If a military member or civilian employee is served with process arising from actions performed in the course of official duties (including traffic tickets), the member shall immediately notify his commander, who shall notify the MARFORRES Civil Law Officer. The MARFORRES commander must next ascertain the pertinent facts and provide copies of the process and pleadings to the MARFORRES Civil Law Officer as soon as practicable. The Civil Law Officer will coordinate with the local NLSO and notify the General Litigation Division of the OJAG. If necessary, the Civil Law Officer shall assist in requesting representation for the servicemember by a Department of Justice attorney.

d. Leave or Liberty to be Granted Persons Served with Process. In those cases where personnel are served with process within the jurisdiction concerned or voluntarily accept service of process from outside the jurisdiction, commanders should normally grant leave or liberty in order to comply with the process unless compliance would be prejudicial to the best interests of the Naval Service. When the member is a witness arising out of the performance of official duties (and the Government is not a party) the commanding officer may issue permissive orders authorizing attendance at no expense to the Government.

2. Subpoena. A subpoena is a court order requiring a person to testify in either a civil or criminal case as a witness. The same considerations exist in this instance as apply in the case of service of process, except for special rules where testimony is required on behalf of the United States in criminal and civil actions, or where the witness is a prisoner.

a. Witness on behalf of the Federal Government. Where Department of the Navy interests are involved and departmental personnel are required to testify for the Navy, the Commandant of the Marine Corps will direct the activity to which the witness is attached to issue TAD orders. Costs of such orders shall be borne by the individual's command. In the event Department of Navy interests are not involved, the member's command will issue orders and the Navy will be reimbursed by the Federal agency concerned.

b. Witness on behalf of accused in Federal court. When naval personnel are served with a subpoena and the appropriate fees and mileage are tendered, COs should issue no-cost permissive orders unless the public interest would be seriously prejudiced by the member's absence from the command. In those cases where fees and mileage are not tendered as required by the Federal Rules of Criminal Procedure, but the person subpoenaed still desires to attend, the CO is authorized to issue permissive orders at no cost to the Government. The individual should be advised that an agreement as to reimbursement for any expenses should be effected with the party desiring their attendance and that no reimbursement should be expected from the Government.

c. Witness on behalf of party to civil action or state criminal action with no Federal Government interest. When a servicemember of the command is in receipt of a subpoena demanding their testimony at a civil or state criminal action where there is no Federal Government interest, the servicemember's commanding officer will normally grant leave or liberty to the person, provided such absence will not prejudice the best interests of the naval service. If the member is being called as a witness for a nongovernmental party only because of performance of official duties, the commanding officer is authorized to issue the member permissive orders at no expense to the government.

10004. RELEASE OF OFFICIAL INFORMATION AND TESTIMONY FOR LITIGATION. It is the policy of the Department of the Navy to make reasonably available official documents and information for use in Federal courts, State courts, foreign courts, and other governmental proceedings unless the information is classified, privileged, or otherwise protected from public disclosure. Nonetheless, MARFORRES units will not provide official

information, testimony, or documents; permit interviews of servicemembers; or allow investigators access to Government property without first consulting with the MARFORRES Civil Law Officer.

1. Personnel Subpoenaed as Witness. Any servicemember assigned to MARFORRES who is served with a subpoena regarding official matters will immediately notify his CO or I-I. Once notified by the servicemember, the CO or I-I must contact the Civil Law Officer.

2. Subpoena for the Production of Documents. By statute, the Secretary of the Navy is deemed to have custody and charge of all Department of the Navy documents, books, records, and property. When a MARFORRES command receives a subpoena for official information the command must immediately contact the MARFORRES Civil Law Officer and forward the subpoena to the Civil Law Officer for appropriate action.

3. Request for Witnesses and Documents Without Subpoena. Any other request for expert or fact witness testimony or the production of documents without a subpoena will be forwarded to the MARFORRES Civil Law Officer for appropriate action.

10005. JURY DUTY. Title 28, U.S. Code § 1863(b)(6) exempts active duty servicemembers from service on Federal juries. Similarly, Title 10 U.S. Code § 982, as implemented by SECNAVINST 5822.2 (32 C.F.R. Part 144) provides that certain members of the Department of the Navy are per se exempt from state and local jury duty. All general officers, COs, personnel assigned to operating forces, in a training status, or stationed outside the United States are exempt from serving on a state or local jury. It is presumed that such jury service would unreasonably interfere with the performance of military duties by these members and adversely affect the readiness of the command to which they are assigned. Other servicemembers may be excused if mission readiness is affected by their absence or if their absence unreasonably interferes with their military job performance. SECNAVINST 5822.2 gives all commanders the authority to invoke the exemption for their personnel. If members do serve on a jury, they shall not be charged leave or lose pay. All fees a servicemember receives for serving on jury duty, with the exception of actual expenses, will be turned over to the U.S. Treasury.

#### 10006. REPRESENTATION BY THE DEPARTMENT OF JUSTICE

1. Personal Tort Liability. Servicemembers are immune from lawsuits brought personally against them that are based on claims arising out of the employee's negligent or wrongful acts or

omissions within the scope of employment. When a servicemember is sued in their personal capacity for matters arising from their official duties, they can request that the U.S. be substituted as a party to the lawsuit and ask for representation by the Department of Justice.

2. Notification Procedures. Any servicemember assigned to MARFORRES who is sued in Federal or state court or served with civil or criminal process or pleading, including traffic tickets, arising from performance of official duties, shall immediately deliver all such process and pleadings to the commanding officer or I-I. The commanding officer or I-I will immediately inform the MARFORRES Civil Law Officer of the suit and the Civil Law Officer will coordinate with the OJAG on any request for representation by the Department of Justice.

#### 10007. FREEDOM OF INFORMATION ACT (FOIA) REQUEST

1. General. The Freedom of Information Act (FOIA) is designed to ensure that agencies of the Federal Government, including military departments, provide the public with requested information to the maximum extent possible. FOIA requests are time sensitive and military departments are required to act promptly when a member of the public submits a proper FOIA request. Normally, agencies receiving a FOIA request must respond to the requestor, in writing, within 20 days of receipt. Within the Department of the Navy, FOIA is implemented by SECNAVINST 5720.42F.

2. Applicability. All correspondence requesting Government information, other than subpoenas, received by MARFORRES commands will be treated as a request under the FOIA. Upon receipt of a FOIA request, units are to immediately date stamp the request to indicate the date received, and FAX the request to the MARFORRES Counsel's Office. The original correspondence and the requested documents will be expressed mailed (next-day delivery) to the MARFORRES Counsel's Office within 48 hours of receiving a FOIA request. MARFORRES Counsel will prepare the MARFORRES response after reviewing the FOIA request and the documents in question. MARFORRES commanders are not authorized to release information or deny the release of information requested under FOIA.

#### 10008. PA REQUEST

1. PA. The PA sets up safeguards concerning the right to privacy by regulating the collection, maintenance, use, and dissemination of personal information by Federal agencies where the information is maintained in a system of records and retrievable by the name of the individual or some other personal identifier.

2. Personal Notification, Access, and Amendment. The PA allows individuals, upon request, to discover whether records pertaining to them are maintained by a Federal agency. Upon request, the system administrator must notify the requesting individual whether or not the system of records under his management contains a record pertaining to that individual. The PA also mandates that an individual will be allowed to inspect and have copies of records pertaining to them that are maintained by Federal agencies. Upon receiving a request from an individual, the systems manager shall permit that individual to review records pertaining to him or her from the system of records. Furthermore, the PA permits individuals to amend information that is inaccurate, to appeal a refusal to amend, and to file a statement of dispute in the record should an appeal be denied.

3. Disclosure of Information Protect by the PA. The PA carefully limits those situations in which the information gathered by a Federal agency may be disclosed to third persons. As a general rule, no personal information from a record or record system shall be disclosed to third parties without the prior written request or consent of the individual about whom the information pertains. The PA provides punishments, including a \$5,000 fine, if information is disclosed in an unauthorized manner.

4. Processing PA Requests. Requests for information from third parties maintained in a system of records received by MARFORRES commands will be processed in the same manner as FOIA requests above. PA requests from an individual for records concerning themselves may be released by the CO or I-I.

10009. BARMENT LETTERS. Individuals who are a threat to the security or good order and discipline of a Marine Corps installation may be barred from entrance. Violations of a properly issued barment letters can be prosecuted under Title 18 U.S. Code, section 1382. MARFORRES commanders desiring to bar individuals from their installation should contact the MARFORRES Civil Law Officer for guidance.

#### 10010. RENTAL VEHICLE DAMAGE

1. Marines traveling on TAD are frequently authorized rental cars to perform their official travel. On occasion, rental cars are damaged and the rental agency attempts to seek reimbursement for the damages from either the traveler or their command. The Military Traffic Command negotiated a contract with numerous rental car companies in the United States and abroad. Under the Agreement, the rental agency will bear the risk of damage or loss of the rental vehicle, subject to the exceptions listed in the agreement. This applies even if the damage or loss was caused by

the negligent act or omission of the servicemember. The Agreement may be accessed at [www.mtmc.army.mil](http://www.mtmc.army.mil). Paragraph 9b of the Agreement lists the exceptions to the coverage. Servicemembers must ensure they comply with all rules and regulations governing the acquisition and use of rental cars, and must be aware of the procedures to follow if damage to the vehicle occurs.

2. What constitutes "official purposes" will vary depending on the situation of each case. Travel for purely personal reasons or to places in connection with personal business is not official. However, use of the rental vehicle for transportation to places that are required for the traveler's subsistence, health, or comfort are incidental to TAD and therefore official purposes. Examples include transportation to and from duty sites, lodging, restaurants, barbers, places of worship, etc.

3. Pursuant to the Military Traffic Management Command's agreement with participating rental car agencies, the rental agency, not the servicemember, is responsible for property damage or personal injury to third parties. If a Marine is sued in his or her individual capacity, the Government will determine if this Marine was acting within the scope of their employment at the time of act or omission. This determination is based on state law. If a servicemember is sued regarding an accident he was involved in while TAD and driving a rental vehicle he should immediately notify his commander. Once notified the commander should seek guidance from the MARFORRES Civil Law Officer.



MARFORRES LEGAL SOP

CHAPTER 11

RESERVE REEMPLOYMENT RIGHTS

SECTION 1: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS  
ACT OF 1994 (USERRA)

	<u>PARAGRAPH</u>	<u>PAGE</u>
GENERAL . . . . .	11100	11-3
PURPOSE OF USERRA . . . . .	11101	11-3
COVERAGE . . . . .	11102	11-3
APPLICATION TO EMPLOYERS . . . . .	11103	11-3
REEMPLOYMENT ELIGIBILITY CRITERIA . . .	11104	11-3
RESPONSIBILITIES OF RESERVIST . . . . .	11105	11-4
ENTITLEMENTS. . . . .	11106	11-4
DISCRIMINATION PROHIBITED . . . . .	11107	11-5
ASSISTANCE AND ENFORCEMENT . . . . .	11108	11-5

SECTION 2: NATIONAL COMMITTEE FOR EMPLOYER SUPPORT OF THE GUARD  
AND RESERVE (NCESGR)

NCESGR. . . . .	11200	11-7
NCESGR FUNCTION . . . . .	11201	11-7
NCESGR PROGRAMS . . . . .	11202	11-8
ACTION . . . . .	11203	11-10

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# MARFORRES LEGAL SOP

## CHAPTER 11

### RESERVE REEMPLOYMENT RIGHTS

#### SECTION 1: USERRA

11100. GENERAL. Essential to the welfare of Reserve Marines is a supportive civilian employer. This chapter outlines Reservists' rights, responsibilities and entitlements under the USERRA. The remaining paragraphs detail the programs and support available to local commanders from the National Committee for Employer Support of the Guard and Reserves (NCESGR).

11101. PURPOSE OF USERRA. The USERRA (Title 38, U.S. Code, Chapter 43) provides that a person who leaves a civilian job for **voluntary or involuntary** military service, in peacetime or wartime, is entitled to reemployment in the civilian job upon release from active duty under honorable conditions. The purpose of the law is to encourage non-career service by minimizing employment problems that can result from such service; minimize disruption to the lives of servicemembers, their employers, fellow employees, and communities; and to prohibit discrimination against persons who perform such service.

11102. COVERAGE. The law covers all persons who perform duty in the uniformed services, except those who were serving in temporary positions where there is no reasonable expectation that employment will continue indefinitely or for a significant period.

11103. APPLICATION TO EMPLOYERS. The law applies to all employers in this country (Federal, state, and all private employers, regardless of size). In order to be entitled to protection under USERRA, the Reservist must have held an "other than temporary" civilian job. (A temporary job is defined as one with a definite end date in the near future.)

11104. REEMPLOYMENT ELIGIBILITY CRITERIA. A Reservist must meet five criteria to have the right of reemployment after a period of active duty. They are:

1. The Reservist must have left the job for the purpose of entering active duty.

2. The period of active duty must not have exceeded 5 years. (Periods of duty in response to emergency recalls, reserve Inactive Duty Training (IDT) periods, and annually scheduled Active Duty for Training (ADT) **do not** count toward the 5-year cumulative total.)

3. The Reservist must have given prior notice to his/her civilian employer.
4. The Reservist must have been discharged or released under honorable conditions, i.e., Honorable or General (Under Honorable Conditions) discharge.
5. The Reservist must have applied for reemployment in a timely manner. Time limits are based on the number of days the Reservist served on active duty. See paragraph 11105 below.

11105. RESPONSIBILITIES OF RESERVIST. The Reservist has two major responsibilities in order to retain his/her rights under USERRA:

1. The Reservist must give prior notice to the employer of an impending absence due to military service (including IDT). This advance notification can be either verbal or written. Notification is not required if it is precluded by military necessity, or under all relevant circumstances, it is impossible or unreasonable to give.

2. The Reservist must report back to work or apply for reemployment in a timely manner.

- a. For Reservists serving up to 30 days of training or service, the deadline to report back to work is the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of 8 hours after the time required for safe transportation from the place of service to the person's residence.

- b. Reservists serving greater than 30 days but less than 181 days must apply for reemployment within 14 days following release from active service.

- c. Reservists serving 181 days or more must apply within 90 days from their release from service.

11106. ENTITLEMENTS. If a returning Reservist meets USERRA's eligibility criteria, the Reservist is entitled to the following:

1. Prompt reinstatement and status.
2. Seniority. The returning Reservist is entitled to be treated as if he or she had been continuously employed for all seniority purposes, including civilian pension.
3. Under USERRA, a reemployed Reservist may not be discharged without cause as follows:

a. For 1 year after the date of reemployment if the person's period of military service was for more than 6 months (181 days or more).

b. For 6 months after the date of reemployment if the person's period of military service was for 31 to 180 days.

c. Persons who serve for 30 or fewer days are not protected from discharge without cause. Under section 4311 of USERRA, however, it would be unlawful to discharge a Reservist because of military service or obligation.

4. Training or Retraining. The returning Reservist must be qualified in order to have the right to reemployment, but the employer is required to make reasonable efforts to qualify the member. This would include training or retraining to help the Reservist learn new equipment and methods.

5. Reinstatement of Health Insurance Coverage. The returning Reservist is entitled to immediate reinstatement of personal and family health insurance coverage. There must be no waiting period and no exclusion of pre-existing conditions other than those that the Department of Veterans Affairs has determined to be service-connected and for which the Federal government will provide care.

6. Accommodations for Disabled Veterans.

11107. DISCRIMINATION PROHIBITED. A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion or any benefit of employment by an employer on the basis of that membership, application for service, or obligation in the uniformed services.

11108. ASSISTANCE AND ENFORCEMENT. Assistance and enforcement of USERRA may be sought through:

1. Non-federal employment.

a. The Secretary of Labor, through the Veteran's Employment and Training Service.

b. The Attorney General through representation by the office of the local U.S. Attorney.

c. Private counsel.

2. Federal employment.

a. The Secretary of Labor, through the Veteran's Employment and Training Service.

b. Office of Special Counsel/Merit System Protection Board.

c. Self representation or private counsel before the Merit System Protection Board.

3. The NCESGR can provide further advice and information on USERRA at 1-800-336-4590 or [www.esgr.org](http://www.esgr.org).

# MARFORRES LEGAL SOP

## CHAPTER 11

### NATIONAL COMMITTEE FOR EMPLOYER SUPPORT OF THE GUARD AND RESERVE (NCESGR)

#### SECTION 2: NCESGR

##### 11200. NCESGR

1. The NCESGR was formed in 1972 as part of the Office of the Secretary of Defense. Its mission is to promote both public and private understanding of the National Guard and the Reserve in order to gain employer and community support through programs, personnel policies, and practices that encourage employee and citizen participation in National Guard and Reserve programs. As organized and established in DoD Directive 1250.1 of 17 August 99, the NCESGR has a full-time staff composed of civilians and selected officers and enlisted personnel nominated by the military services and their Reserve components.

2. The NCESGR established fifty-five state and territorial committees for employer support to broaden the effort at the community level. Located in each state and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Mariana Islands, the committees are made up of distinguished volunteer citizens and representatives of each of the Reserve components located in the state. Their mission is to support the Guard and Reserve units in their local communities by working with and encouraging the support of Reservists' civilian employers.

11201. NCESGR FUNCTION. The NCESGR provides information, opinions, advice, and recommendations. In that capacity, they:

1. Operate a proactive program directed at U.S. employers, employees, and communities that ensures understanding and appreciation of the role of the National Guard and Reserve in the context of the DoD Total Force Policy. They encourage and assist employee participation in National Guard and the Reserve training programs without job impediment of any kind, to include encouraging voluntary compliance with the employment and reemployment rights of non-career members of the Armed Forces.

2. Promote and develop volunteer leadership at the national, state, and local levels to encourage the development of employer personnel policies and practices that endorse and facilitate employee participation in National Guard and Reserve activities.

3. Encourage strong National Guard and Reserve unit bonds with the community and develop public understanding of the National Guard and the Reserve through actions that promote a partnership between civilian organizations and military units in the community.
4. Assist in preventing and resolving employer and employee problems that result from National Guard or Reserve membership, training, or other requirements.
5. Assist in educating National Guard and Reserve members on their obligations and responsibilities to employers.
6. Use the military chain of command to promote the understanding of fair relationships between employers and Reservists to maximize National Guard and Reserve participation.
7. Foster a relationship with military agencies, military training schools and courses, and associations to enlist their assistance in educating Reservists about their legal rights, obligations, and responsibilities.
8. Promote and develop civilian and military management attitudes that encourage initial and continued membership in the National Guard or the Reserve.

11202. NCESGR PROGRAMS. Programs conducted by the National Committee and its local committees include:

1. 5-Star Employer Program. The ESGR 5-Star Employer Program seeks to inform and educate employers about their rights and responsibilities towards their employees who serve in the National Guard and Reserve, and to also recognize and reward those employers who go "over and above" the requirements of the law.

A 5-Star Employer denotes the following:

1. Signed a Statement of Support publicly demonstrating support for their employees who serve in the National Guard and Reserve.

2. Reviewed their human resources policies to ensure compliance with the USERRA.

3. Promotes training for managers and supervisors to effectively manage their employees who serve in the Guard and Reserve.

4. Adopted policies and programs that are "Above and Beyond" what is required by the USERRA Law.



5. Serves as an advocate for employee service in the National Guard and Reserve and helps to promote the mission of ESGR.

2. Boss lifts. A Boss lift is an organized activity that links selected employers and civic leaders with their Reserve component personnel. Invitees are taken to military sites both within the state and out of the state to observe military training of their employees. This gives the employer firsthand information on what Reservists do when they are away from their civilian occupations training with their military units.

3. Breakfasts with the Boss. This program brings together local employers, military representatives, and state ESGR members in an informal breakfast meeting. (Although the program is called Breakfast with the Boss, some innovative committees have expanded the concept to luncheons, dinners, or participation in military-sponsored events.) The program provides a forum for a candid exchange of information and resolution of any employer concerns or problems. It also affords those "time-constrained" employers an opportunity to speak to local military representatives and ESGR committee members about their Reservists.

4. Ombudsman. Release of employees from work to perform military service is governed by a complex body of Federal and state laws. Applying these laws in unique employment situations is often confusing. NCESGR provides an information and mediation service from its Virginia office, accessible nationwide through a toll-free telephone number (1-800-336-4590). Questions about the law, problems with individual supervisors, and inquiries about the propriety of specific personnel practices can all be addressed by the committee's ombudsmen. The service is available to employers as well as to members of the National Guard and Reserve. At the national level, the program is conducted by a specially trained team of experts in the field of reemployment rights for members of the National Guard and Reserve. At the state level, trained volunteers, frequently attorneys or labor-relations experts, assist local employers and employees in understanding and applying the law.

5. Statement of Support. Committee members meet with business executives and supervisors and explain the significance of the National Guard and Reserve. The employers are then asked to sign, post, publicize, and implement a Statement of Support certificate. Signers of the document pledge they will allow their employees the time off necessary to participate fully in National Guard and Reserve training activities without endangering their civilian careers.

6. Advertising. The national committee conducts a public service advertising program through The Advertising Council, Inc. A major civilian advertising agency donates its creative services. The government pays only the actual costs of producing and distributing the television, radio, print, and outdoor advertising promoting the program. In many states, local employer support groups supplement the national effort by producing local announcements and by making personal contact with broadcasters and publishers to ensure the advertising messages are used. As with all public service advertising, NCESGR counts on the good will of the media for "pro-bono" placement of all advertising.

7. Speakers. State committees schedule key defense spokesmen to address influential employer audiences. Senior Pentagon officials regularly accept speaking engagements on behalf of employer support, as do senior ranking military commanders. Many retired military officials also volunteer to speak on behalf of employer support.

8. Awards and Recognition. Supportive employers, i.e., those who enact policies that make it easier for their employees to remain active in the National Guard and Reserve, receive special recognition from the employer support committee. Each committee operates a program honoring these employers with certificates, plaques, and national recognition. Many firms publicize their awards through employee newspapers.

9. Exhibits/Associations. Each year, committee members and staffers bring the employer support message to the annual gatherings of significant private business, trade, and professional associations. The committee maintains a small inventory of trade show exhibits for use at these meetings. Military personnel accompany each exhibit to describe the critical role of the National Guard and Reserve and to solicit support from employers attending the meetings. More formal efforts to involve employer associations are also conducted, including the publication of manuscripts about the National Guard and Reserve in association and industrial publications.

11203. ACTION. Pursuant to MCO 5420R.15\_, unit commanders will:

1. Assign a member of the Reserve unit or a member of the active duty staff as a representative to the local NCESGR committee. Commanders are authorized to fund attendance as official travel.

2. Provide Marines and employers as much advance notice as possible with schedules of weekend drills and annual training duty.

3. Maintain liaison with employers and advise them of schedule changes.
4. Become familiar with the National Committee's Ombudsman Program. The National Ombudsman may be contacted at commercial (703) 696-1400, DSN 426-1400, or toll-free 1-800-336-4590 (except in Guam and the Commonwealth of the Mariana Islands). The internet address is <http://esgr.org>.
5. Contact respective state committees to request assistance, acquire information on available programs, and provide necessary support. Information on the state committees may be obtained by calling the National Committee at commercial (703) 696-1400, DSN 426-1400, or toll-free 1-800-336-4590 (except in Guam and the Commonwealth of the Mariana Islands).
6. Request support of either the MARFORRES ESGR Liaison Officer (located in MARFORRES Public Affairs) or the NCESGR Public Affairs Office, for assistance in developing and executing programs designed to increase employer understanding or for information regarding the awards program for employers of Reservists.
7. Further information is available at <http://esgr.org>.